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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

August 26, 2010 - 2:09 p.m.  
Public Utilities Commission  
21 South Fruit Street  
Suite 10  
Concord, New Hampshire

DAY 4  
AFTERNOON ONLY  
  
PUBLIC SESSION  
(REDACTED FOR PUBLIC USE)

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

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

SITE EVALUATION SUBCOMMITTEE:  
Dept. of Environmental Services

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

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

\* \* \*

Counsel for the Committee: Michael Iacopino, Esq.

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

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ALSO PRESENT:

REPTG. THE APPLICANT:  
(Laidlaw Berlin BioPower)

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

REPTG. CITY OF BERLIN:

Merritt Schnipper, Esq.  
(Downs Rachlin Martin)

REPTG. CLEAN POWER DEVELOPMENT:

James T. Rodier, Esq.

COUNSEL FOR THE PUBLIC:

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

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1 P R O C E E D I N G

2 (Hearing resumed at 2:09 p.m.)

3 CHAIRMAN BURACK: We will go ahead and  
4 resume here. Attorney Roth, would you kindly restate your  
5 question that you had posed just before we took a break,  
6 and we'll continue.

7 MR. ROTH: Yes, sir. It will at least  
8 give me an opportunity to reformulate it, since I've had  
9 -- some of this I make up as I go along.

10 BY MR. ROTH:

11 Q. We asked in some data requests for the Applicant to  
12 provide sensitivity analyses of its pro formas to test  
13 the basic business model against various scenarios.  
14 And, the response that we got was a refusal to do that,  
15 because I think that the Applicant stated that they  
16 thought "it was speculative, and therefore not  
17 informative." Do you remember that response?

18 A. Generally, yes. In the technical -- second technical  
19 session?

20 Q. Yes. Let me just -- I'll see if I can find it. We  
21 asked for a sensitivity analysis on fuel cost  
22 increases, and the answer was "Trying to state a price  
23 point where the Project becomes uneconomic is purely a  
24 hypothetical exercise subject to changes in the

1 underlying assumptions of the energy markets over the  
2 next 20 years that cannot be reasonably predicted." Do  
3 you agree with that statement?

4 A. No, not entirely, I don't. And, I don't know who made  
5 that response. I don't believe that was me. And, I'm  
6 not going to speculate on who did from our team. But,  
7 at the time of the second technical session, I think we  
8 had not yet reached finalization of our Power Purchase  
9 Agreement with Public Service of New Hampshire, and we  
10 had still not reached agreement in concept, anyways,  
11 with fuel suppliers. Both of those events have now  
12 taken place. And, I think that it's -- we're in a  
13 better position to have less uncertainty on those  
14 components of the economics of this project.

15 With regard to my involvement, my  
16 testimony does say that I have been involved in the  
17 budgeting and pro forma development of the Project.  
18 And, that certainly was the case in the -- for most of  
19 the period of the development of this Project.  
20 However, my roles in that now are very limited, now  
21 that we have -- the Project has proceeded to where we  
22 now are looking at financing and talking to financial  
23 institutions and developing a much more sophisticated  
24 pro forma, if you will, for the purposes of attracting

1 investment capital. So, I think it's best that I  
2 probably, because of my shifting role in that, to let  
3 others address questions that you may have about our  
4 pro forma and financial models and such.

5 Q. Unfortunately, I'm going to actually ask you a few more  
6 questions about it, but I'm not going to get into --  
7 plow into the details of the pro forma that was  
8 prepared.

9 A. Okay.

10 Q. But, and I think you suggested that the lenders are  
11 going to be very interested in a detailed and robust  
12 pro forma, is that correct?

13 A. I think that's fair to assume.

14 Q. And, would you agree that the one that was produced was  
15 not terribly robust and detailed?

16 A. I don't have that in front of me. Is that an exhibit  
17 you can --

18 Q. I believe that's --

19 MR. IACOPINO: A confidential exhibit.

20 MR. ROTH: It's a confidential exhibit,  
21 but I'm not asking you to say anything about it of a  
22 confidential nature.

23 MR. IACOPINO: Forty-three.

24 WITNESS KUSCHE: I'm sorry. Could you

1 just repeat the question.

2 BY MR. ROTH:

3 Q. Would you agree that the pro forma provided in  
4 Exhibit 3 -- excuse me, Exhibit 43 is not terribly  
5 detailed and robust?

6 A. I would agree that it's not terribly detailed. But, as  
7 far as robustness, I'm not a financial person and I'm  
8 not an economist, but I would characterize it as being  
9 "attractive and healthy". I don't know what "robust"  
10 means.

11 Q. What was the first one?

12 A. Attractive to investors.

13 Q. Okay.

14 A. And a healthy cash flow.

15 Q. Do you believe that this pro forma would be acceptable  
16 as a basis for a lender to make a lending decision?

17 A. You know, again, in my humble opinion, no. I'm sure  
18 that the lenders would be --

19 Q. Okay.

20 A. -- looking for more additional data to complete their  
21 due diligence.

22 Q. Okay. Now, without, again, getting into the details of  
23 any of the actual numbers, just because I have a number  
24 of questions about the actual numbers. But this

1 morning or before the lunch break you spoke about  
2 capacity market penalties that the Project might incur  
3 under certain scenarios. Were any of those, as far as  
4 you know, factored into the pro forma?

5 A. I believe they were. At least the last pro forma that  
6 I was involved in, I assigned what I would call a "UCAP  
7 rating". Taking our capacity -- and, I'm not saying  
8 that that's included in this exhibit. Just saying what  
9 I did in the last time I was involved. Took the  
10 capacity number, and assigned a UCAP rating to it. To  
11 be very conservative, assigning less than the full  
12 capacity for capacity payment purposes, because there  
13 are adjustments made. And, so, just assuming that we  
14 might not be available at one of the times when ISO  
15 measures your capacity, and I don't want to speculate  
16 on what percentage factor I used, but I did include  
17 something.

18 Q. Okay.

19 A. And, we can certainly get you the detail and whether or  
20 not that was included in this pro forma.

21 Q. So, you can't tell by looking at it whether it was  
22 included?

23 A. I cannot.

24 Q. Okay.



1 A. You'll notice that the "income" line includes  
2 "electricity", "REC", and "capacity revenue". So, it's  
3 --

4 Q. So, the underlying number that was included for  
5 capacity revenue should --

6 A. They're all lumped in together there.

7 Q. Okay. Fair enough. I guess the rest of my questions  
8 about it are probably going to be confidential. So,  
9 I'm going to withhold them for now. Will you be  
10 available during the confidential session?

11 A. Yes, sir.

12 Q. Okay. And, as far as the sensitivity analysis, is it  
13 your understanding that the lenders looking to vet this  
14 Project are going to look for sensitivity analyses?

15 A. I would expect so, yes.

16 Q. And, given what you know about sort of the Project's  
17 place in that process, when would you expect to have  
18 sort of the pro forma ready, and with all of the  
19 sensitivity analyses?

20 A. I really would have to leave it to someone else on our  
21 team to answer that question, because I'm not directly  
22 involved.

23 MR. ROTH: Okay. Thank you. That's all  
24 I have. Oh, I'm sorry. I do have another one. And, this

1 one hopefully you'll find interesting.

2 WITNESS KUSCHE: Uh-oh.

3 BY MR. ROTH:

4 Q. I noted from your first testimony that you have a  
5 Master's in Forestry from SUNY-ESF. Maybe it wasn't  
6 called "ESF" at the time. Was it "ESF" at the time or  
7 did they --

8 A. Yes. The Environmental -- or, Environmental Science &  
9 Forestry School, ESF.

10 Q. Okay. And, I took my son there to go look at it last  
11 spring, and he didn't particularly like it.

12 (Laughter.)

13 BY THE WITNESS:

14 A. I no longer live in Upstate New York.

15 BY MR. ROTH:

16 Q. The question I have is, based on your experience in  
17 running a biomass company, and your Master's degree in  
18 Forestry from a nationally-respected institution on  
19 forestry, do you have, in your mind, sort of a figure  
20 for how many people it takes to generate a ton of  
21 biomass for a power plant?

22 A. Let me go back to the beginning. I have a Master's  
23 degree, but it's not in Forestry. I have a Master's  
24 degree in Environmental Science and Land Use Planning

1 from the Forestry School at the State University of New  
2 York, in Syracuse.

3 Q. Okay.

4 A. So, I'm not a forester. In fact, I didn't take a  
5 single course while I was undergoing my Master's  
6 degree. And, then, to answer the question, no, I  
7 don't. When I managed the Greenville Biomass Project  
8 in Maine, we never analyzed anything from that metric,  
9 using that metric.

10 Q. Okay. When you managed that facility, do you have sort  
11 of a percentage of the biomass that was produced in the  
12 immediate vicinity, and I mean to say 50 miles?

13 A. Yes. We had -- that was a relatively small plant,  
14 approximately 16 megawatts net, on a really good day.  
15 And, so, we consumed approximately 180,000 tons a year  
16 of biomass fuel. We had, at times, 50 suppliers, from  
17 50 separate loggers, sawmills, chipping operations and  
18 such. Because of our proximity in the highway to  
19 Canada, where across the border there are a great  
20 number of sawmills, sawmills that are still doing very  
21 well, because the Canadian government helps support  
22 those sawmills, we got a relatively large amount of  
23 sawdust and bark from those sawmills. So, it's not  
24 perfectly analogous to the situation in Berlin. But,

1 even with the access and proximity of those sawmills,  
2 we probably varied between getting, I would say, 30  
3 percent and 50 percent of our wood from those Canadian  
4 sawmills. The rest of it was procured essentially  
5 within -- most of it within 50 miles of our plant.  
6 And, as has been described here, it's not a perfect  
7 circle. There were back hauls involved from our  
8 suppliers. There were loggers who would move to  
9 different areas; sometimes close to us, sometimes far  
10 away, who we had a good relationship with. So, it was  
11 constantly changing. But I would say that most of our  
12 -- probably at least half of our fuels generally came  
13 from within 75 miles of the plant.

14 Q. Okay. And, would you expect to have a similar  
15 experience with this facility?

16 A. "Experience" meaning?

17 Q. Fifty percent of your fuel coming within 75 miles of  
18 the power plant?

19 A. Well, again, it's never apples and apples. But I would  
20 expect that we would get as much fuel that could be  
21 produced sustainably from as close a proximity to the  
22 plant as can be achieved. Simply because the economics  
23 are favorable for everyone involved to do that, to  
24 source the wood as close as you can. The loggers are

1 going to make more, the landowners are going to make  
2 more for their stumpage or biomass stumpage, if you  
3 will. Transportation is less. It just makes -- it's  
4 logical, it makes economic sense, to source as much as  
5 close as possible.

6 Q. But you're not willing to hazardous a guess at a  
7 percentage of what that would be?

8 A. No, because it's really predicting the future. And,  
9 it's impossible to know how these things are going to  
10 develop over time. And, it's going to be an evolution.  
11 There will be an infrastructure that is going to be  
12 built up there as the opportunities are presented for  
13 our plant. And, I know that there's a big interest  
14 from people who are in the logging industry, who want  
15 to get back in the logging industry. And, the most  
16 attractive customer that they can possibly have is a  
17 big biomass plant, which is constantly taking wood.  
18 And, so, I think we're going to represent a very  
19 attractive new customer for low-grade wood. And, I  
20 think there's going to be a response locally, and we're  
21 going to utilize that as best we can.

22 Q. And, the final question, you perhaps heard me asking  
23 about the cost of outfitting a chipping crew. Do you  
24 have any opinion about whether it's a million five (1.5

1 million) or half that?

2 A. Well, it depends on how you -- how you want to look at  
3 that. A chipper alone, a brand-new chipper alone,  
4 roughly \$600,000. But you can't do it with just a  
5 chipper. You need other pieces of equipment to cut the  
6 logs, get the logs to the chipper, you need trucks, you  
7 need a lot of equipment to do modern forestry or modern  
8 logging. So, it really depends upon how you define  
9 that. Whether it's just the chipping operation or  
10 whether it's the whole infrastructure that's needed,  
11 from start to finish, delivery, and cutting to  
12 delivery.

13 Q. Do you think it's a realistic figure that it could be  
14 as much as 1,500,000?

15 A. I think, if someone was to start from scratch, yes.

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

17 CONTINUED BY THE WITNESS:

18 A. And, needed to buy all of those components, yes.

19 MR. ROTH: All right. Thank you.

20 CHAIRMAN BURACK: Thank you, Attorney  
21 Roth. Mr. Harrington.

22 MR. HARRINGTON: Thank you. I have a  
23 few questions.

24 BY MR. HARRINGTON:

1 Q. I wanted to start out with -- this is something that  
2 there seems to be a little bit of confusion over. The  
3 figure keeps being used as "70 megawatts output from  
4 the generator". Yet, if you look at the SIS study that  
5 the ISO used, and, in fact, in the capacity supply  
6 obligation you were assigned, they have the generator  
7 output at 65.9, taking off 7.2 for station services,  
8 you get to 58.7. So, is that the accurate output of  
9 the plant?

10 A. No. We're now -- we've now advanced into more detailed  
11 design of our plant, with the entry of our EPC vendor  
12 and others. And, when we've -- keep in mind that, when  
13 we initially made our application for interconnection,  
14 it was in February of 2008, two and a half years ago.  
15 Under the ISO rules, you are not allowed to increase  
16 that amount at all. You can decrease it by 60 percent.

17 Q. Otherwise you'd lose your place in the queue.

18 A. Exactly. And, so, at some point later in the design  
19 effort, it was determined that, in fact, that boiler,  
20 because of its construction and because of B&W's  
21 experience in modifying these boilers, could actually  
22 produce more energy than that. So, we went back to  
23 ISO, and ISO repeated the rules to us, and said "at  
24 some point, when you know exactly what your incremental

1 capacity is going to be, you will need to go back in,  
2 make an additional supplemental interconnection  
3 request, which will be assigned a new queue number, and  
4 go through the studies, to determine whether or not  
5 that extra amount can be put on the grid. And, if it  
6 is put on the line, what upgrades are going to be  
7 required for that."

8 We're in the process of starting that  
9 now, as our design has evolved, and the resolution is  
10 pretty good now on what it is that we're going to be  
11 requesting for an additional increment. And, we're in  
12 the process of beginning that.

13 Q. So, that would be the 70 megawatts, less the 7.2  
14 station services, would be your output?

15 A. Exactly.

16 Q. Okay. And, as of right now, though, your maximum  
17 allowable output is 58.7?

18 A. Correct.

19 Q. Thank you. There was a question on the plant  
20 efficiency. I don't know if you know this off the top  
21 of your head. There was a lot of different things  
22 discussed on this. But the figure was given at 37 and  
23 a half percent moisture content, that it would come out  
24 to be 87.5. But it appears the nominal number that



1 people are using for moisture content is 45 percent,  
2 which would lower the efficiency somewhat. Do you have  
3 the efficiency of using 45 percent? I mean, either you  
4 have it or you don't. I don't expect you to calculate  
5 it right now.

6 A. The answer is "no." But I want to back you up a little  
7 bit in that. 37.5 percent and 45 percent are moistures  
8 of wood. The "87.5" I believe you're referring to is a  
9 capacity factor?

10 Q. Yes. Yes.

11 A. They're completely unrelated. The capacity factor  
12 addresses what percentage of the year the plant will be  
13 producing its full output.

14 Q. Uh-huh.

15 A. Not whether it will be at 63 megawatts or 57 megawatts  
16 or anything else. So, they're really apples and  
17 oranges.

18 Q. Maybe I misstated what I was trying to get at. If you  
19 go to 45 percent moisture content, you're going to have  
20 to burn more wood in order to get the same output.  
21 And, that's, I guess, what I was looking at, the fact  
22 that you would burn more wood. How much more wood  
23 would you burn at 45 percent, I guess?

24 A. Okay.

1 Q. And, I'm not asking for a number right now, but --

2 A. The answer is "yes", you would burn more wood, because  
3 you're having to basically evaporate out more moisture.  
4 So, you're losing --

5 Q. So, your actual output is going to be 58.7 megawatts,  
6 if you're running at 100 percent power? That was the  
7 -- that's what you're allowed to put out, even though  
8 you can put out more in the future?

9 A. That's correct. Based on a net, net figure, yes.

10 Q. And, you're connecting, as we discussed earlier, under  
11 a minimum connection standard, and your intent is to be  
12 a baseloaded plant?

13 A. Yes.

14 Q. Okay. Again, what's the EcoMin of the plant? EcoMin,  
15 economical minimum run.

16 A. In our interconnection request, I believe we used  
17 30 megawatts.

18 Q. Thirty megawatts. And, there was a lot of discussion  
19 on this, and, again, one other question on the  
20 technical filing, the ramp rate was listed in there as  
21 going at one megawatt per three minutes going up. Do  
22 you have an equivalent one going down, without having  
23 to just dump steam into the condenser?

24 A. I don't, at this point. I think that that's something

1 that we'll be relying upon, our engineers, --

2 Q. Okay.

3 A. -- and specifically B&W, to provide to us.

4 Q. Okay. Getting back to this whole idea of the  
5 interconnection that we were talking about earlier this  
6 morning, there's a lot of discussion on exactly what's  
7 going on there. And, I think it's fair to say that,  
8 using the capacity supply obligation of 58.7, that's  
9 what you should be -- that's what the ISO will pay you  
10 for for capacity, and so you should be able to deliver  
11 that, with the assumptions they make on the capacity  
12 supply obligation of other people on that loop, such as  
13 Granite Reliable, which, as you stated, was I think  
14 30 megawatts.

15 So, the issue, I guess, comes then is  
16 what happens when Granite Reliable is not running at  
17 30 megawatts, which is their capacity supply  
18 obligation, but they're running at, say, 90 megawatts?  
19 And, there's the Clean Power Development plant, which,  
20 again, is assumed above you in the queue to be running  
21 -- they could be running at 29 megawatts, plus you have  
22 the hydros, plus you have the Whitefield biomass plant.  
23 It would appear that all of those plants cannot run at  
24 100 percent of their output at the same time? You say

1 -- you've got to say something.

2 A. Yes. Yes, I agree with that.

3 Q. Okay. So, I think the issue here is then that, for  
4 example, as you mentioned before, that the hydro plants  
5 are going to self-schedule and bid in at zero, because  
6 there's no cost, no additional cost for the fuel. I  
7 think the same, would you agree, the same applies to  
8 the wind plant?

9 A. My understanding is that wind plants can also  
10 self-schedule.

11 Q. Yes. So, what it's going to come down to is which of  
12 the biomass plants can run, and probably not all of  
13 them can run simultaneously, even if the wind is -- if  
14 it's a very windy day, which also corresponds to  
15 generally a light load day, so you would have a lighter  
16 load on the Coos Loop, so that would make the problem  
17 even a little bit worse.

18 A. The only distinction I would add there is that it's up  
19 to ISO, but I know that many times ISO will not shut  
20 off one biomass plant. I mean, they will do it  
21 according to economic dispatch.

22 Q. Uh-huh.

23 A. But, assuming that everybody is bidding in at the same  
24 point, they bring everybody down a little bit.

1 Q. So, I guess, the thing I wanted to get across here is  
2 that some plants, some -- maybe some existing plants,  
3 like the Whitefield facility, there could conditions  
4 that arise that cause that plant to back down in power  
5 or not be dispatched at all?

6 A. Correct.

7 Q. Do you know what the heat rate is of the Whitefield  
8 plant?

9 A. I do not. I know that it's a similar plant to  
10 Greenville, but they have made a number of  
11 modifications to that. And, so, I wouldn't hazard a  
12 guess on that.

13 Q. But I guess we've established what I was trying to get  
14 there. So, this is what I'm trying to get at, your  
15 plant. The ability of your plant to load-follow is,  
16 generally, the larger the plant, the bigger the mass,  
17 the harder it is to do. So, if you go into a day where  
18 you think you're going to be able to, you know, you  
19 might even -- I guess I should ask you a question.  
20 Would you get to the point where you'd start doing your  
21 own wind predictions, based on what you think the  
22 output of Granite Reliable would be to plan your run  
23 for that day?

24 A. I don't know that I'm experienced enough or qualified

1 enough to answer that question. But we will have a  
2 certain degree. A biomass plant is not as agile as a  
3 gas-fired plant in following load like that. But it  
4 does have a certain amount of ability to do that.  
5 There's a lag time. Obviously, it's a wood fire. But  
6 our goal will be to run as much as we can, as often as  
7 we can. And, we'll be subject to economic dispatch  
8 under those circumstances. And, ISO will have all of  
9 our operating characteristics, they'll know exactly  
10 what our abilities are to shed load or to come up.  
11 And, so, we'll be taking orders from ISO.

12 Q. Okay. Good. Kind of jumping around here. Just the  
13 earlier conversation to clarify the record, we seem to  
14 be interchanging "MIS economic dispatch" and the term  
15 "MIS going into effect". But that really doesn't  
16 happen, does it?

17 A. Right.

18 Q. Okay. That only has to do with interconnecting, --

19 A. Correct.

20 Q. -- not running? Okay. And, did I -- let's see.

21 MR. HARRINGTON: That was it, I guess.  
22 The Chairman will be happy to hear your correcting your  
23 testimony saved me a whole list of questions that I had  
24 crossed out. So, --

1                   WITNESS KUSCHE: One thing I would like  
2                   to add, if I may? And, I mentioned it earlier, but I want  
3                   to just emphasize it. And, this comes from a very recent  
4                   conversation with an ISO representative, his name is Alan,  
5                   Alan McBride, who those of you who have worked with him,  
6                   know that he's a very experienced and credible person at  
7                   ISO-New England. He clarified to me that UCAP rating of a  
8                   plant is not affected during any instance of economic  
9                   dispatch. And, that's an important point here, when  
10                  you're looking at the revenues of our plant, our capacity  
11                  payment revenues from our plant, that we will not be  
12                  downgraded under circumstances when we have been  
13                  economically dispatched.

14 BY MR. HARRINGTON:

15 Q. Right. The capacity only applies to your ability to  
16                  give your capacity supply obligation during the time of  
17                  a shortage event.

18 A. (Witness nodding in the affirmative).

19 Q. Which, if there was a congestion on the Coos line, and  
20                  you couldn't deliver the full 58.7 megawatts --

21                                   (Cellphone distraction - court reporter  
22                                   interruption.)

23 BY MR. HARRINGTON:

24 Q. What I was trying to say is that, I agree with you

1 completely, that it doesn't have anything to do with  
2 your capacity supply obligation and your capacity  
3 payments, unless there is a shortage event, in which  
4 case the ISO is going to say "deliver your  
5 58.7 megawatts right now." Now, more than likely,  
6 that's going to happen at a time when the wind isn't  
7 blowing, and you'll be able to deliver all of them.  
8 But the possibility exists that, for some reason it was  
9 a very windy, hot day, and I don't know, maybe the cold  
10 front hit northern New Hampshire, but it hasn't hit the  
11 rest of New England, and you wouldn't be able to put  
12 out the full 58.7, at which case you'd be subject to  
13 penalties in your capacity payments?

14 A. Correct.

15 MR. HARRINGTON: Okay. Just so we got  
16 that straight. Thank you.

17 MR. IACOPINO: I have one question,  
18 actually, it's for Mr. Needleman, based on  
19 Mr. Harrington's questions. Yesterday, I believe there  
20 was a data request from the Committee for some  
21 calculations, and with regard to the efficiency ratings,  
22 that you were going to provide us, at different moisture  
23 levels.

24 MR. NEEDLEMAN: Yes. I think they have



1       been done, and they're just double checking them. So,  
2       we'll have them to you as soon as we can.

3                       MR. IACOPINO: Thank you.

4                       CHAIRMAN BURACK: Commissioner Ignatius,  
5       do you have questions?

6                       CMSR. IGNATIUS: Just a few. Thank you.

7 BY CMSR. IGNATIUS:

8 Q.    Mr. Kusche, this is about the net output of the plant  
9       at 58.7 megawatts. Is that the level that was used in  
10       the Feasibility Study?

11 A.    I believe so.

12 Q.    All right. And, was that the amount used in the System  
13       Impact Study?

14 A.    Yes.

15 Q.    In the interconnection agreement that you're now  
16       beginning to go through in draft form, is it 58.7  
17       megawatts as the net output?

18 A.    I believe it is, but I would like to confirm that after  
19       looking at the document, which I don't have with me.

20 Q.    All right. You can let us know later if it's different  
21       from that.

22 A.    Okay.

23 Q.    And, you said you were beginning to work on an  
24       application of some sort to bring that incremental

1 capacity to ISO and have them work through that. Do  
2 you know when you might be filing that request?

3 A. Our goal is to have that done by the end of next week.

4 Q. Submit it to ISO?

5 A. Submit it to ISO.

6 Q. Any expectations from the ISO on how long it would take  
7 them to go through that study?

8 A. "No", is the short answer. It really depends upon  
9 their backlog. And, they have taken a long time to do  
10 some of these studies in the past. But they have  
11 assured me that they're much more streamlined and are  
12 working through them much faster now.

13 Q. Could we be talking about a year or more before it's  
14 finalized?

15 A. It's possible.

16 Q. So, what is the Applicant asking for, in terms of a  
17 certificate? What level of output?

18 A. We are assuming that we will be -- we will complete the  
19 incremental increase with our interconnection, so that  
20 we will be a 70-megawatt gross plant, with a 63  
21 megawatt net output.

22 Q. And, you're assuming that, by the time the plant would  
23 become operational, the ISO piece in bringing that  
24 incremental capacity would have been completed?

1 A. Yes, we are.

2 CMSR. IGNATIUS: Thank you.

3 MR. HARRINGTON: Mr. Chairman, I just  
4 have a follow-up question?

5 CHAIRMAN BURACK: Yes, please.

6 BY MR. HARRINGTON:

7 Q. Getting back to the efficiency issue, I just looked in  
8 your 1.

9 A. Yes. Exhibit 1?

10 Q. Exhibit 1, Page 38, where it says "This equates to a  
11 fuel to gross power output of approximately 25 percent.  
12 The efficiency will vary to some degree with fuel  
13 moisture content, as added heat input is required to  
14 vaporize water contained in fuels with a higher  
15 moisture than in the design fuel." So, I guess my  
16 question appears to be backed up by what was stated  
17 here, is that, as the water content of the fuel goes  
18 up, the efficiency goes down. So, I'd still ask for  
19 the efficiency at the 45 percent, versus the 38 and a  
20 half. And, also, while you're doing that, this is for  
21 gross power output of 70 megawatts, and the gross power  
22 output that we're dealing with, at least for the time  
23 being, until it's adjusted otherwise by the ISO, is  
24 65.9 megawatts. So, I'm not sure if that means you

1 just burn less wood or you run it at full max, and you  
2 only are allowed to put out that much, I'm not sure how  
3 you -- I'm not familiar with biomass plant regulations.  
4 So, does this mean you're going to get a lower  
5 efficiency or you just cut back on the amount of fuel  
6 you put in, because of the lower output?

7 A. Well, again, I'm not an engineer, especially a boiler  
8 engineer. But we would use less fuels, the plant would  
9 operate at its 95 percent level or whatever that is.

10 Q. Okay. All right.

11 A. Which is still very much at the peak efficiency. So, I  
12 --

13 Q. I think that answered my question, as far as I'm  
14 concerned. But I would like the efficiency at  
15 45 percent moisture content.

16 A. Okay.

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

19 CHAIRMAN BURACK: Any other questions  
20 from the Subcommittee for this witness at this time?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Very good. In  
23 a moment, I'm going to ask one of our members to make a  
24 motion to enter into nonpublic session. But, before I do

1 that, I just want to take a moment to try to plan the  
2 remainder of at least what I could see as being the public  
3 hearing portion of this entire proceeding. So, I just  
4 want to take a moment to just look at the list of  
5 witnesses. We will have -- we have now completed  
6 presentation, with the exception of going into nonpublic  
7 session to review certain documents, we've completed the  
8 witnesses from the Applicant's case in chief, as well as  
9 the City's case in chief. And, we just have the remaining  
10 witnesses, we will have new witnesses, as I understand it  
11 at this point, would be Mr. Liston and Mr. Gabler.

12 And, so, Attorney Rodier, what I'd like  
13 to understand first from you is how long do you anticipate  
14 it's going to take you with each of these witnesses to do  
15 your direct with each of them? And, then, I'm going to  
16 ask counsel how long they currently anticipate it will  
17 take for cross-examination of each of those two witnesses?

18 MR. RODIER: Mr. Chairman, Mr. Gabler is  
19 going to be a brief direct, five minutes, let's say.  
20 Okay? Mr. Liston is in a little bit different category,  
21 because what I've asked him to prepare for is that, when  
22 he gets up there, I said "we want to respond to the  
23 critique that, at the request of the Committee, was  
24 elicited from the Applicant." So, I wanted him to take

1 ten minutes, let's say, to just go through, you know, each  
2 of the points that was made, and briefly respond or rebut.  
3 I've told him time is of the essence. And, we're  
4 interested in some very, you know, concise comments. So,  
5 I think we're looking -- we could be looking at 15 minutes  
6 for Mr. Liston.

7 CHAIRMAN BURACK: Thank you. Then,  
8 that's very helpful. Parties who would be cross-examining  
9 these witnesses, do you have a sense approximately of how  
10 much time you currently think you might require for each  
11 witness?

12 MR. NEEDLEMAN: Thirty to forty minutes  
13 for Mr. Liston; about ten minutes for Mr. Gabler.

14 CHAIRMAN BURACK: Okay. City of Berlin?

15 MR. SCHNIPPER: The City doesn't have  
16 any plans to cross either of those witnesses.

17 CHAIRMAN BURACK: Thank you. And,  
18 Counsel for the Public?

19 MR. BROOKS: Probably about the same as  
20 Attorney Needleman stated.

21 CHAIRMAN BURACK: So, you're  
22 anticipating approximately 30 to 40 minutes for Mr.  
23 Liston, and approximately 10 minutes for Mr. Gabler, is  
24 what you're anticipating?

1 MR. BROOKS: Correct.

2 CHAIRMAN BURACK: So, I'm just looking  
3 at this, just trying to approximate this. It looks to me  
4 like, realistically, we're probably looking at  
5 approximately two hours, not including the questions from  
6 the Committee for Mr. Liston's testimony, approximately a  
7 half an hour for Mr. Gabler's testimony. That's what it's  
8 looking like to me. And, again, I don't have a sense yet  
9 as to how much time the Committee itself will have.

10 The other things that we have on our  
11 agenda to complete would be closing arguments or a  
12 summary. And, again, the agenda does note, if deemed to  
13 be necessary by the Chair, and I guess my question at this  
14 point of each of you is how strong is your desire to be  
15 able to make a brief closing summary here?

16 MR. NEEDLEMAN: I would certainly  
17 appreciate the opportunity to, maybe about 10 or 15  
18 minutes, to make a closing statement.

19 CHAIRMAN BURACK: Okay. Mr. Schnipper?

20 MR. SCHNIPPER: I mean, no. The City  
21 simply wants -- just wishes to urge the adoption of its  
22 proposed conditions. Could do that right now.

23 CHAIRMAN BURACK: Okay. So, you just  
24 made it. Attorney Rodier?

1 MR. RODIER: Okay. Well, our desire,  
2 Mr. Chairman, is extremely, because we've only got, and I  
3 know it's not anybody's fault, it's because of the  
4 legislative timetable, but we've only got two days to do a  
5 brief, which really can't be done. Well, can't be done in  
6 the way we would normally do a brief, if we had all the  
7 time in the world. So, we would probably need 15 minutes.

8 CHAIRMAN BURACK: All right. Counsel  
9 for the Public?

10 MR. BROOKS: We don't anticipate making  
11 a closing statement.

12 CHAIRMAN BURACK: Thank you. Okay. So,  
13 it looks like we probably have to plan for approximately  
14 half an hour for closing arguments. I don't know if there  
15 will be any outstanding motions or verification of  
16 exhibits that we'll have to deal with. I'm hoping that  
17 we've taken care of most of those items as we've been  
18 moving along.

19 MR. NEEDLEMAN: Can I make one comment,  
20 Mr. Chairman?

21 CHAIRMAN BURACK: Yes.

22 MR. NEEDLEMAN: There are a number, I  
23 initially moved most of our exhibits into the record.  
24 Since that point, a number of additional Applicant



1 exhibits have been introduced, which I haven't moved at  
2 this point. I was just going to wait until the end to  
3 make sure we capture them all.

4 CHAIRMAN BURACK: That's fine. And, we  
5 can move all of those into the record at the end.

6 MR. ROTH: And, Mr. Chairman, we also  
7 may have at least one other, perhaps one or two others, to  
8 bring in.

9 MR. IACOPINO: Will you have those by  
10 tomorrow?

11 MR. ROTH: I hope so. And, we have one  
12 of them here already. But I'm afraid -- this is the  
13 Dummer Yard Leachate Agreement. I believe there's more to  
14 it, and I wanted to chase that down. So, --

15 MR. IACOPINO: We'd like to have them by  
16 the close of the evidence.

17 MR. ROTH: Of course.

18 MR. IACOPINO: Without having to hold  
19 the record open.

20 CHAIRMAN BURACK: Okay. And, as I  
21 indicated before, I will leave time at the end for any  
22 additional public comment. I recognize there may be  
23 members of the public who are not here now who may want to  
24 comment, but I just -- just to get a general sense of

1 interest, I just want to know, are there any members of  
2 the public here today who would anticipate being here at  
3 the close of the proceeding tomorrow who would like to be  
4 able to make public comment?

5 FROM THE FLOOR: Yes.

6 CHAIRMAN BURACK: One, two, three.

7 Okay.

8 MR. IACOPINO: And, Mr. Chairman, also  
9 there was an representative from Indeck who indicated to  
10 me --

11 MR. RODIER: Right.

12 MR. IACOPINO: -- that he would like to  
13 make a public comment as well.

14 CHAIRMAN BURACK: Okay. And, again,  
15 just for those members of the public here, I would ask you  
16 to please keep your statements very brief. I would ask  
17 you to keep them to no more than three minutes, but you're  
18 welcome to prepare a longer written statement for  
19 submittal to the record. But, again, I'd ask you to  
20 please be to the point and be as brief as you can. Okay.

21 This is all very helpful. And, what is  
22 not clear to me, and will not be clear to us until we have  
23 gotten into this process of looking at the confidential  
24 documents in nonpublic session, how long this is actually

1 going to take. We're going to -- we will recess at 5:00  
2 sharp today. So, we will make our way through a list of  
3 -- I believe it's 11 different documents here, as rapidly  
4 as we can. I may, depending on how timing works out here,  
5 I may ask us to convene at 8:30 tomorrow morning, rather  
6 than 9:00. And, it may be that we will commence with a  
7 continuation of nonpublic session. But, again, we will  
8 not know that until the close today. If by some chance we  
9 complete our nonpublic session before the end of the day  
10 today, we will not -- we will come back very briefly into  
11 public session, but it would only be for purposes of  
12 sealing the record. So, if there are folks who want to  
13 make sure they're not missing any of the public session,  
14 and you plan to leave as soon as we go into closed  
15 session, you're certainly welcome to stay. But, again,  
16 the only thing I would anticipate occurring in public  
17 session, after we do conclude that, if we do conclude it  
18 today, would simply be a sealing of the record of the  
19 nonpublic session. And, then, we would recess until  
20 tomorrow morning.

21 MR. RODIER: Mr. Chairman?

22 CHAIRMAN BURACK: Are there any other  
23 procedural questions?

24 MR. RODIER: Minor housekeeping

1 question?

2 CHAIRMAN BURACK: Yes.

3 MR. RODIER: If the Committee decides to  
4 start at 8:30 in the morning, and none of the CPD folk are  
5 around, would you e-mail us?

6 CHAIRMAN BURACK: Yes. We will  
7 certainly let you know.

8 MR. RODIER: Okay.

9 CHAIRMAN BURACK: Likewise, if it turns  
10 out that we are going to need additional time in nonpublic  
11 session, we will try to let everybody know that. And,  
12 certainly, we will let the parties know that as well. We  
13 will otherwise post a sign on the door outside explaining  
14 that we are still in nonpublic session.

15 Okay. And, I've just been advised by  
16 counsel that, tomorrow morning, if we need to return to  
17 nonpublic session, we will open in public session and do a  
18 new motion to go into nonpublic session. So, that's how  
19 we will proceed with that. But, again, we'll certainly --  
20 we will send an e-mail out tonight to the parties letting  
21 them now where we are, and approximately how much  
22 additional time we anticipate we would need for a  
23 nonpublic session, if it appears that's going to be  
24 necessary tomorrow morning. Okay?

1                   And, again, it appears to me, based on  
2 what you all have told me about your expectations for the  
3 remaining witnesses, that we should be able to complete  
4 this entire process by certainly no later than 4:00 or  
5 5:00 tomorrow afternoon. But, if we can do it sooner, I  
6 would urge all of us to do that.

7                   So, having said that, I will, in a  
8 moment, ask for a motion to enter nonpublic session. I  
9 will explain, again, before we do that, that under the  
10 terms of the confidentiality orders that have been issued  
11 in this proceeding, there are only limited parties  
12 entitled to see certain documents. And, members of the  
13 public are not -- will be asked to leave the room, as will  
14 be any other parties who might have the authority to see  
15 certain documents, but not all documents. So, for  
16 example, I will ask Mr. Richmond, or any others from  
17 Cousineau, to stay outside the room, except during times  
18 when we're asking questions about documents that relate  
19 specifically to his work. I will take these not in the  
20 order that you hear them in the motion, which will be just  
21 based on their numerical sequence of their numbering, but  
22 I will take them in a sequence that I believe will enable  
23 us to make it possible to get first through those -- those  
24 documents that involve all of the parties, so that we will

1 enable Mr. Rodier and the folks from Clean Power  
2 Development to then leave, so that we can then proceed to  
3 other documents that would only involve the three parties  
4 of the Applicant and the City and Counsel for the Public.

5 So, any other questions, before we take  
6 a motion to enter into nonpublic session?

7 (No verbal response)

8 CHAIRMAN BURACK: Very well. Do you  
9 have a motion?

10 MS. IGNATIUS: I do. Mr. Chairman, I  
11 move that we enter into nonpublic session. The purpose  
12 would be to discuss the content of the material deemed  
13 confidential under RSA 91-A:5. And, the documents in  
14 question we believe are the following list: Applicant  
15 Exhibit 1, Appendix Q, the System Feasibility Study;  
16 Applicant Exhibit 38, Development Agreement documents;  
17 Applicant Exhibit 38A, the First Amendment to the  
18 Development Agreement and Lease; Applicant Exhibit 39, the  
19 Power Purchase Agreement; Applicant Exhibit 41, the  
20 Hancock comfort letter; Applicant Exhibit 42, the Key Bank  
21 comfort letter; Applicant Exhibit 43, the Laidlaw Pro  
22 Forma, Applicant Exhibit 56, the System Impact Study;  
23 Applicant Exhibit 61, the Pre-EPC Contract; Applicant  
24 Exhibit 62, the Cousineau Draft Fuel Supply Agreement; and

1 Applicant 63, the redacted Cousineau Draft Fuel Supply  
2 Agreement.

3 Mr. Chairman, as presiding officer, you  
4 previously found these documents to be exempt from the  
5 Right to Know Law, under 91-A:5, IV, as records pertaining  
6 to confidential, commercial, and financial information.  
7 And, the documents have been provided to the Committee  
8 under seal.

9 CHAIRMAN BURACK: Thank you for that  
10 motion.

11 (No verbal response)

12 MR. NORTHROP: Mr. Chairman, I second  
13 the motion.

14 CHAIRMAN BURACK: Thank you very much,  
15 Mr. Northrop. I'm now going to ask for a roll call vote,  
16 which is required by our statute, in order to enter into  
17 nonpublic session. And, we'll ask our counsel if he would  
18 please call the roll.

19 MR. IACOPINO: Thank you. Dr. Kent?

20 DR. KENT: Yea.

21 MR. IACOPINO: Mr. Wright?

22 MR. WRIGHT: Yes.

23 MR. IACOPINO: Ms. Muzzey?

24 DIR. MUZZEY: Yes.

1 MR. IACOPINO: Mr. Stewart?

2 DIR. STEWART: Yes.

3 MR. IACOPINO: Mr. Northrop?

4 MR. NORTHROP: Yes.

5 MR. IACOPINO: Mr. Janelle?

6 MR. JANELLE: Yes.

7 MR. IACOPINO: Mr. Harrington?

8 MR. HARRINGTON: Yes.

9 MR. IACOPINO: Commissioner Ignatius?

10 CMSR. IGNATIUS: Yes.

11 MR. IACOPINO: Mr. Chairman?

12 CHAIRMAN BURACK: Yes.

13 MR. IACOPINO: It's unanimous.

14 CHAIRMAN BURACK: Thank you. A

15 unanimous vote of the Committee, therefore representing a  
16 majority having voted "yes", we will now go into nonpublic  
17 session. And, I would ask that all members of the public  
18 please leave the room. Again, as I mentioned before, we  
19 will notify the parties when we return to public session.  
20 And, we will open tomorrow morning in public session, and,  
21 if necessary, return to nonpublic session.

22 (Pages 41 through 138 regarding the  
23 confidential nonpublic session are  
24 contained under separate cover.)



1 (Hearing resumes on the public portion of the record.)

2 CHAIRMAN BURACK: We are now back in  
3 public session. And, Ms. Ignatius, do you have a motion?

4 CMSR. IGNATIUS: I do. Now that we're  
5 back in the public session, I move to seal the transcript  
6 of the nonpublic session just concluded, because the  
7 contents of the transcript involves documents that have  
8 been found to be exempt from public disclosure, pursuant  
9 to RSA 91-A:5, IV, as being confidential, commercial, and  
10 financial documents.

11 MR. NORTHROP: Mr. Chairman, I second  
12 the motion.

13 CHAIRMAN BURACK: Thank you.

14 MR. IACOPINO: Mr. Chairman, I would  
15 point out that this vote must be -- must carry by a  
16 two-thirds majority. So, we will have to take a roll  
17 call.

18 CHAIRMAN BURACK: Thank you. Would you  
19 please proceed to do so.

20 MR. IACOPINO: Dr. Kent?

21 DR. KENT: Yes.

22 MR. IACOPINO: Mr. Wright?

23 MR. WRIGHT: Yes.

24 MR. IACOPINO: Director Muzzey?

1 DIR. MUZZEY: Yes.

2 MR. IACOPINO: Mr. Stewart?

3 DIR. STEWART: Yes.

4 MR. IACOPINO: Mr. Northrop?

5 MR. NORTHROP: Yes.

6 MR. IACOPINO: Mr. Janelle?

7 MR. JANELLE: Yes.

8 MR. IACOPINO: Mr. Harrington?

9 MR. HARRINGTON: Yes.

10 MR. IACOPINO: Commissioner Ignatius?

11 CMSR. IGNATIUS: Yes.

12 MR. IACOPINO: Mr. Chairman?

13 CHAIRMAN BURACK: Yes.

14 MR. IACOPINO: It's unanimous.

15 CHAIRMAN BURACK: Thank you. So, seeing

16 that more than two-thirds of the Committee members have

17 voted in the affirmative, the transcript will be sealed.

18 And, we -- again, we are now in public session. But we

19 will now -- we will recess until 8:30 tomorrow morning.

20 At which time I expect we will, very shortly thereafter,

21 entertain a motion to go back into nonpublic session to

22 continue review of confidential documents. Thank you.

23 (Hearing adjourned at 5:17 p.m; to

24 reconvene Aug. 27, 2010, at 8:30 a.m.)

**{SEC 2009-02} (DAY 4 PM SESSION) - August 26, 2010  
LAIDLAW BERLIN BIOMASS, LLC**

			<b>23:8</b>	<b>16:24;27:16;36:23;</b>
<b>\$</b>	<b>4</b>	<b>9</b>	<b>affirmative (2)</b>	<b>37:1</b>
<b>\$600,000 (1)</b>	<b>4:00 (1)</b>	<b>9:00 (1)</b>	23:18;140:17	<b>Appendix (1)</b>
14:4	37:4	35:6	<b>afraid (1)</b>	38:15
<b>1</b>	<b>40 (1)</b>	<b>90 (1)</b>	33:12	<b>apples (3)</b>
	30:22	19:18	<b>afternoon (1)</b>	12:19,19;17:16
<b>1 (4)</b>	<b>41 (2)</b>	<b>91-A5 (3)</b>	37:5	<b>Applicant (17)</b>
27:8,9,10;38:15	38:19;40:22	38:13;39:5;139:9	<b>again (18)</b>	4:11,15;26:16;29:24;
<b>1,500,000 (1)</b>	<b>42 (1)</b>	<b>95 (1)</b>	7:17,22;12:19;18:14,	32:24;38:4,14,16,17,18,
14:14	38:20	28:9	19;19:20;28:7;31:8,12;	19,20,21,22,23,23;39:1
<b>1.5 (1)</b>	<b>43 (2)</b>	<b>A</b>	34:14,19;35:7,15;36:19;	<b>Applicant's (1)</b>
13:24	7:4;38:21		37:1,9;40:18;140:18	29:8
<b>10 (2)</b>	<b>45 (7)</b>	<b>abilities (1)</b>	<b>against (1)</b>	<b>application (2)</b>
30:23;31:17	17:1,3,7,19,23;27:19;	22:10	4:13	15:13;25:24
<b>100 (2)</b>	28:15	<b>ability (3)</b>	<b>agenda (2)</b>	<b>applies (2)</b>
18:6;19:24	<b>5</b>	21:15;22:4;23:15	31:11,12	20:7;23:15
<b>11 (1)</b>		<b>able (7)</b>	<b>agile (1)</b>	<b>appreciate (1)</b>
35:3	<b>5:00 (2)</b>	19:10;21:18;24:7,11;	22:2	31:17
<b>138 (1)</b>	35:1;37:5	31:15;34:4;37:3	<b>ago (1)</b>	<b>approximate (1)</b>
40:22	<b>5:17 (1)</b>	<b>above (1)</b>	15:14	31:3
<b>15 (3)</b>	140:23	19:20	<b>agree (7)</b>	<b>approximately (10)</b>
30:5;31:17;32:7	<b>50 (5)</b>	<b>acceptable (1)</b>	5:3;6:14;7:3,6;20:2,7;	11:14,15;27:11;30:9,
<b>16 (1)</b>	11:12,16,17;12:3,5	7:15	23:24	22,23;31:5,6;32:13;
11:14	<b>56 (1)</b>	<b>access (1)</b>	<b>Agreement (9)</b>	36:21
<b>180,000 (1)</b>	38:22	12:1	5:9,10;25:15;33:13;	<b>areas (1)</b>
11:15	<b>57 (1)</b>	<b>according (1)</b>	38:16,18,19,24;39:2	12:9
<b>2</b>	17:15	20:21	<b>ahead (1)</b>	<b>arguments (2)</b>
	<b>58.7 (9)</b>	<b>accurate (1)</b>	4:3	31:11;32:14
<b>2:09 (1)</b>	15:8;16:17;18:5;19:8;	15:8	<b>Alan (2)</b>	<b>arise (1)</b>
4:2	23:20;24:5,12;25:9,16	<b>achieved (1)</b>	23:4,5	21:4
<b>20 (1)</b>	<b>6</b>	12:22	<b>allowable (1)</b>	<b>around (2)</b>
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