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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

September 21, 2010 - 1:29 p.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 2

DELIBERATIONS
AFTERNOON SESSION ONLY

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

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 Northrup
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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P R O C E E D I N G

CHAIRMAN BURACK: Good afternoon. We will continue our deliberations in the matter of Docket Number 2009-02, relating to the Application of Laidlaw Berlin BioPower, LLC. This morning there was a motion made by Mr. Harrington that we take administrative notice of a document dated October -- I'm sorry, dated August 17, 2010, that is addressed to -- or, the cover letter is addressed to Debra A. Howland, Executive Director and Secretary of the New Hampshire Public Utilities Commission. This is from Andrew W. Serell, S-e-r-e-l-l, Esquire. And, this is regarding "Petition for Approval of the Power Purchase Agreement between Public Service Company of New Hampshire and Laidlaw Berlin BioPower, LLC, DE 10-195. Again, the motion was that we take administrative notice of this petition, and I will grant that motion. So, we will take administrative notice of this document.

(Administrative notice taken.)

CHAIRMAN BURACK: And, we have marked this as Committee Exhibit 12 in this proceeding.

(The document, as described, was herewith marked as Committee Exhibit 12 for identification.)

[DELIBERATIONS]

1 CHAIRMAN BURACK: Okay. What I'd like
2 to do now, recognizing that just before we took our lunch
3 break we took an informal pole of the membership to get a
4 sense as to where we might come out on the issuance of a
5 Certificate. It appeared that there would be, subject to
6 our getting agreement on appropriate conditions, it
7 appears that there may be unanimous support, a full
8 consensus here among the Subcommittee members for issuance
9 of a Certificate for this Project.

10 So, the way I'd like to proceed here is
11 to work through a discussion of all of the conditions that
12 we think might be appropriate. We don't have to wordsmith
13 these all in detail, but we have to capture the concepts,
14 the intent, the principles here, understanding that we are
15 asking our legal counsel to memorialize, in a written
16 order, the final decision here.

17 So, what I'd like to do is to start from
18 the fairly specific, and then conclude with any sort of
19 most general or overarching conditions that we might need
20 to consider. And, again, I propose to take these issues
21 really in the same order, more or less, in which we
22 conducted our deliberations. That is, I'd like to start
23 with a discussion of the state environmental permits and
24 any conditions related to those. And, then, I don't know

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6

1 whether there would be any conditions related to the
2 consideration of alternatives issue, and then -- or, other
3 aspects of the first section of 162-H:16. But, then, I
4 want to work through each of the criteria sections, in
5 terms of the financial, managerial, and technical
6 capability first. And, then, whether there's anything
7 relating to the interference with orderly development of
8 the region. And, again, all of the other aspects
9 specified in 162-H:16. And, then, we can wrap up with any
10 overarching issues as well.

11 We also need to include here any
12 stipulations that we may wish to consider that have been
13 entered into or agreed to by or among any of the parties
14 to the proceeding.

15 So, what I'd like to ask is that we
16 start by talking about any entity associated -- any issues
17 associated with issuance of the state permits, starting
18 with the Air Permit.

19 MR. WRIGHT: I'm assuming, Mr. Chair,
20 that we would incorporate the permit issued by DES as a
21 condition of the Certificate?

22 CHAIRMAN BURACK: So, that would be the
23 final decision on the Air Permit dated July 26, 2010?

24 MR. WRIGHT: That is correct.

[DELIBERATIONS]

7

1 CHAIRMAN BURACK: And, that's Laidlaw
2 Exhibit 50?

3 MR. WRIGHT: Correct. And, I think, as
4 I also mentioned yesterday, that the Committee should
5 consider adding a condition that would give the Department
6 the administrative authority to make revisions, either to
7 that permit through its normal processes, and ultimately
8 issue a -- in the case of an Air Permit, an Operating
9 Permit for the facility, if and when it's constructed and
10 they apply for and go through that process of getting that
11 permit.

12 CHAIRMAN BURACK: Please. Attorney
13 Iacopino.

14 MR. IACOPINO: Mr. Wright, one thing I
15 need to know. Isn't that Operating Permit, that's
16 actually something that you do under the auspices of
17 federal law?

18 MR. WRIGHT: That is correct. The Title
19 V Permit is, in fact, a federal permit, administered at
20 the state level.

21 MR. IACOPINO: I don't think we, just so
22 you know, I don't think that we can or need to authorize
23 them to do what they're required to do under a federal
24 statute.

[DELIBERATIONS]

8

1 MR. WRIGHT: Okay. That permit also
2 qualifies as a Final Permit under the state's RSA 125-C,
3 which authorizes the issuance of state permits. So, I'll
4 leave it to your discretion.

5 MR. IACOPINO: Okay. I mean, we can do
6 it. I just wanted you to know, I'm sure that it's
7 absolutely necessary.

8 CHAIRMAN BURACK: Well, it may not be
9 necessary, but I think it -- it seems to me it would be
10 appropriate for us to delegate to the Department of
11 Environmental Services the authority to, as Mr. Wright has
12 suggested, to approve amendments to the existing permit,
13 and to issue any new or additional air quality permits
14 that may be required for this facility in the future.
15 Because, again, we've heard testimony that there could be
16 changes in law in the future, correct? That there may be
17 additional permits needed for this facility, if there are
18 modifications?

19 MR. WRIGHT: There could be revisions,
20 yes, exactly.

21 CHAIRMAN BURACK: And, so, I think the
22 question would be, would we, as a Committee, assuming the
23 facility is built, would we feel a need to have to be
24 notified of and potentially to take action on and approve

[DELIBERATIONS]

1 permits that would be issued by the Department of
2 Environmental Services, again, that would have to comply
3 with existing law and regulation? Or, would we want to
4 reserve the authority to ourselves to be able to require
5 something more or in addition to what would be required by
6 state or federal authority?

7 MR. WRIGHT: I believe the Committee has
8 granted that authority before, in the case, I believe, AES
9 Londonderry, when that gas plant was built, and Newington
10 Energy. So, there's probably already existing language in
11 those past certificates that would probably meet that
12 requirement.

13 MR. HARRINGTON: Mr. Chairman?

14 CHAIRMAN BURACK: Mr. Harrington.

15 MR. HARRINGTON: Just a comment and
16 question. I think that makes perfectly good sense,
17 because, even if were to come back, we'd simply -- we'd
18 bring Mr. Wright back here and he'd tell us what he was
19 doing and we'd all say "Oh, good." And, then, we'd -- it
20 was kind of a lesson in futility. So, certainly, they
21 could handle any future changes.

22 My question had to do with the
23 stipulations that are carried in the Air Permit, do we
24 actually have to adopt those or are they already in force

[DELIBERATIONS]

10

1 by virtue of the Air Permit being issued from DES?

2 MR. IACOPINO: The Air Permit is not
3 officially issued until you issue a certificate.

4 MR. HARRINGTON: Okay. But doesn't it
5 then get issued under --

6 MR. IACOPINO: And, the statute requires
7 you to include their conditions.

8 MR. HARRINGTON: Okay. It does?

9 MR. IACOPINO: Yes.

10 MR. HARRINGTON: All right. That
11 answers my question then.

12 CHAIRMAN BURACK: Thank you. Okay.
13 Anything else on Air Emissions Permit, in terms of
14 conditions, that anybody feels we need to discuss?

15 (No verbal response)

16 CHAIRMAN BURACK: All right. If we
17 could, then let us turn to the Site-Specific Alteration of
18 Terrain Permit, which is their recommendations in Laidlaw
19 Exhibit 46, and that's dated April 21, 2010. Mr. Stewart,
20 do you wish to discuss this issue?

21 DIR. STEWART: I think the conditions
22 are straightforward, they're in Exhibit 46, excuse me.
23 And, they're standard conditions for a Site-Specific
24 Alteration of Terrain Permit.

[DELIBERATIONS]

11

1 CHAIRMAN BURACK: And, so, your
2 recommendation is that we --

3 DIR. STEWART: I would recommend that we
4 incorporate the Alteration of Terrain recommended permit
5 conditions into the Certificate.

6 CHAIRMAN BURACK: Thank you. And, would
7 you also recommend that we include a provision similar to
8 what Mr. -- we discussed with Mr. Wright, regarding the
9 Air Permit, regarding delegation authority to the
10 Department?

11 DIR. STEWART: Yes. I think that that
12 condition should be included for all the DES permits that
13 are included in the Certificate.

14 CHAIRMAN BURACK: Thank you. And, is
15 there -- okay. Let's turn then to discussion of the
16 Shoreland Permit, that is the permit to be issued under
17 the Comprehensive Shoreland Protection Act. Again,
18 conditions there are attached to Laidlaw Exhibit 46, at
19 least the recommended conditions from the Department of
20 Environmental Services.

21 DIR. STEWART: That's correct. And, I
22 would recommend that those project-specific conditions,
23 relative to the Shoreland Program, also be included in the
24 Certificate.

[DELIBERATIONS]

1 CHAIRMAN BURACK: Okay. Thank you.
2 Likewise, you discussed both the Industrial Wastewater
3 Indirect Discharge Permit, and there's an Indirect
4 Discharge Request that's identified in Laidlaw 47.

5 DIR. STEWART: Yes. The way this --
6 there's actually, relative to the Sewer Connection Permit,
7 there are some permit conditions included in Exhibit 46.

8 CHAIRMAN BURACK: Right.

9 DIR. STEWART: Which I would recommend
10 be included. And, Exhibit 47 has the wastewater and
11 indirect discharge -- wastewater indirect discharge
12 request approval. And, it likewise has conditions of
13 approval, which I would recommend be included in the
14 Certificate.

15 CHAIRMAN BURACK: Okay. Thank you. Any
16 other observations or thoughts on conditions related to
17 that set of issues on the environmental permitting?

18 (No verbal response)

19 CHAIRMAN BURACK: All right.
20 Mr. Stewart, a question for you. At various times during
21 discussions, you have mentioned the possibility of
22 requiring that there be an environmental monitor on-site
23 to observe the excavation. Is that something that you
24 feel needs to be a condition or is that something that you

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1 feel is already addressed in a scope of work?

2 DIR. STEWART: Within the Alteration of
3 Terrain Bureau recommended permit conditions, number 8,
4 well, it is -- it's all of number 8, includes a
5 requirement for an environmental monitor, who's either a
6 certified professional in erosion and sediment control or
7 a Professional Engineer. Perhaps this is the -- the
8 discussion has been about observation of excavations for
9 possible contamination from, you know, preexisting
10 contamination from oil and hazardous materials. And, so,
11 this may be a place or maybe it's a separate condition
12 that the environmental monitor, or an equivalent person,
13 because I'm not sure I would bind the Applicant to this
14 particular person for this, observe the soil and ensure
15 that there's no -- no hot spots of oil or hazardous
16 material.

17 CHAIRMAN BURACK: Okay. So, we might
18 add that as a further condition to that permit then? Is
19 that what you're suggesting or --

20 DIR. STEWART: It's really outside --
21 well, it's somewhat related, but a little bit outside of
22 the Terrain Alteration. But it could -- I think the
23 Committee has the discretion to fold that kind of
24 condition into the Terrain Alteration conditions, I

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1 believe. And, I would yield to the counsel on that.

2 MR. IACOPINO: Whether you fold it in or
3 you just make it an additional condition of the
4 Certificate, it's really the same thing. But I guess my
5 question, just so that I understand it, that this is
6 something that I'm going to be drafting for you is, this
7 is a separate condition or one that's in addition to
8 Condition Number 8, which requires an environmental
9 monitor or equivalent person to be on-site during the
10 excavation?

11 DIR. STEWART: I believe so, yes. And,
12 it's someone there --

13 MR. IACOPINO: The present condition
14 does not contain that requirement. It just requires an
15 environmental monitor, who reports after certain rain
16 storms and things like that, is that right?

17 DIR. STEWART: Right. The intent of the
18 additional condition is to have a professional, you know,
19 observe the soil at some juncture, to ensure that there's
20 no significant contamination with oil or hazardous
21 materials.

22 CHAIRMAN BURACK: And, typically, a
23 person who would do that kind of work would either be a
24 Professional Engineer with experience in this kind of

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15

1 work, or a geologist or hydrogeologist?

2 DIR. STEWART: That's right.

3 CHAIRMAN BURACK: And, so, Mr. Stewart,
4 what you're proposing as a condition then is that we would
5 -- we would require that, at all times while excavation is
6 occurring, or just at appropriate points of time?

7 DIR. STEWART: I think appropriate
8 points in time would be fine, in terms of the screening of
9 the excavated materials for oil and hazardous materials.

10 CHAIRMAN BURACK: And, would this
11 environmental monitor have -- could it be the same person
12 as their -- as the Applicant's --

13 DIR. STEWART: Yes, I'm thinking on that
14 --

15 CHAIRMAN BURACK: -- environmental
16 consultant or does it have to be somebody independent of
17 their environmental consultant?

18 DIR. STEWART: I think it could be their
19 environmental consultant. As we discussed earlier,
20 there's an obligation to report if contamination is
21 detected on-site, by the Applicant or, I believe, by an
22 environmental professional. So, it could -- it could be
23 an environmental consultant that's separate from Terrain
24 Alteration. I'm not sure I want to bind the Applicant to

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1 this particular individual having all those
2 characteristics, when it's possible it could be a separate
3 person.

4 MR. IACOPINO: Could I just ask a
5 question? If I understand correctly, it's got to be
6 either a Professional Engineer -- to be an environmental
7 monitor, it has to be either a Professional Engineer or a
8 certified -- somebody certified in erosion control?

9 DIR. STEWART: That would be for Terrain
10 Alteration. And, that's one of the reasons I'm -- you
11 know what I'd like to -- I think we have a sense that we
12 need this condition. And, I really would like to go back
13 and discuss this with the Waste Management Division folks
14 as we finish the condition, because those are the folks
15 that deal with these kinds of situations on a day-to-day
16 basis.

17 MR. IACOPINO: Though, what I was going
18 to ask, though, is I imagine that somebody who is simply
19 certified in erosion control is probably not -- does not
20 have the qualifications to do this additional condition of
21 monitoring during excavation?

22 DIR. STEWART: That's correct. There's
23 PEs that could, you know, carry both tasks. But there's
24 also an environmental consultant who I believe will be

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17

1 on-site at certain junctures. And, so, I mean, it's
2 possible that it could be an environmental consultant
3 separate from the erosion control person. But it also
4 could be the same person. So, I'm not sure we want to
5 bind the Applicant in that sense, but we want somebody
6 qualified. Do we have enough of a sense that you need for
7 a condition?

8 MR. IACOPINO: I can probably write a
9 condition that says something along the lines of "a
10 qualified individual, subject to the approval of the Waste
11 Management Division to be on-site during excavation at
12 appropriate times."

13 DIR. STEWART: I think that would work.

14 CHAIRMAN BURACK: That may be sufficient
15 or satisfactory. I was also trying to think if there was
16 another way to address the concern that you've raised,
17 Mr. Stewart. And, one thought I had is to -- would be to
18 have a condition that any -- well, that they need to have
19 somebody present and that any discovery of any
20 contamination in soil or groundwater would need to be
21 reported to the Waste Management Division. I understand
22 that, under most instances, there's probably a requirement
23 to report by law in any event. But there are some gray
24 areas sometimes in reporting statutes, and so that we --

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18

1 so that the state has full and complete information about
2 what is, in fact, being found, and just may want to ask
3 them to report whatever they're finding.

4 DIR. STEWART: That would be a way to
5 meet the concern that was raised during our deliberations.

6 CHAIRMAN BURACK: Okay.

7 MR. IACOPINO: No, but I have one
8 further question. What are the appropriate times? I'm a
9 lawyer, I'm not an engineer.

10 DIR. STEWART: Yes. Well, one is when
11 excavations are occurring.

12 MR. IACOPINO: Okay.

13 DIR. STEWART: But it's also possible
14 that an individual could be screening a pile of soil that
15 was excavated. And, so, you know, I think either way
16 could meet the --

17 MR. IACOPINO: How about "during all
18 excavations and screenings of excavated material"?

19 DIR. STEWART: That works. I mean, the
20 most conservative approach is to have the professional
21 there while all the excavation is going on. I'm not sure
22 that's necessary.

23 CHAIRMAN BURACK: Okay. Thank you.
24 And, what we may be able to do is take a break in a while

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1 here, once we've gotten through all the conditions.

2 Mr. Stewart, if you want to perhaps touch base with folks
3 at the Department by phone and just see if they have any
4 further input on that, that would be helpful.

5 Okay. There is another set of issues on
6 some of the environmental permitting matters that we may
7 need to come back to. We may need to search for
8 references to this or discussion of this. We had a fair
9 amount of testimony relating to the Covenants -- the
10 Covenant Not To Sue, as well as the EPA agreement. And,
11 it occurs to me that I believe there was some
12 representations or commitments made by the Applicant as to
13 a willingness or ability of various parties to essentially
14 either guarantee or agree to be bound by those documents.
15 And, I'd be grateful if one of the members of the
16 Committee here would take the time. I suspect this
17 probably appears in the transcript of the day on which
18 Public Counsel was questioning, it was probably
19 Mr. Frecker, about the various environmental issues, but
20 it could be on a different date.

21 Counsel is showing me on Day 1 where
22 there is some discussion of this with Mr. Frecker. But I
23 believe there was some further discussion with counsel on
24 this issue. Mr. Frecker -- well, we'll find that. We'll

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20

1 keep searching for this issue, and we'll come back to it.
2 But I think that's another issue that we will want to
3 address.

4 Okay. Let's just ask, with respect to
5 the "consideration of alternatives" question, was there
6 any condition that anyone thought was appropriate?

7 (No verbal response)

8 CHAIRMAN BURACK: My recollection and
9 notes don't suggest there was anything there, but I just
10 don't want to close the door, if anybody has anything?

11 (No verbal response)

12 CHAIRMAN BURACK: Okay. Let's turn then
13 to the statutory criteria in 162-H:16 in each of
14 subsections (a), (b), and (c), and work through those.
15 Starting with the financial, managerial and technical
16 capability.

17 I believe the first, with respect to
18 financial capacity, one of the items that we discussed was
19 a condition that there be approval of a Power Purchase
20 Agreement by the PUC. And, again, the exhibits themselves
21 that we have are both 39 -- Laidlaw 39 and 40, one of
22 those is the confidential and redacted version of that
23 document, I believe. But I think there's a question here
24 as to how we would want to structure such a condition,

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21

1 recognizing that, as we have heard from the testimony,
2 there may be some -- may be some controverted aspects of
3 that agreement, and we don't know for sure what will -- if
4 something is approved by the PUC, whether it will
5 necessarily be what Public Service Company of New
6 Hampshire has asked to have approved or whether the PUC
7 would ultimately modify that, and see if the parties would
8 accept that modification.

9 So, I guess the question is, how should
10 we appropriately construct a condition on this issue?
11 Does anybody have any thoughts on this?

12 MR. HARRINGTON: I think, if you go
13 back, and, of course, it's kind of hard to go into these,
14 because these are confidential documents, but there is
15 provisions in there having to deal with "the PPA", not "a
16 PPA", I think they talk about letters of intent and so
17 forth where the conditions were spelled out. So, I think
18 the appropriate condition here would be to have the PUC
19 approve the PPA as provided.

20 CHAIRMAN BURACK: With a condition --
21 with an understanding that, if they approve something
22 different, they would have to come -- we'd would have to
23 -- they would have to come back to us for us to consider
24 whether or not what was approved and agreed to by the

[DELIBERATIONS]

22

1 parties that was different or maybe materially different,
2 and I don't know what that materiality threshold would be,
3 but somehow there was some material difference, at least
4 with respect to the financial capacity of the Applicant to
5 be able to undertake the project. Is that --

6 MR. HARRINGTON: Yes, I think --

7 CHAIRMAN BURACK: Is that where you're
8 going?

9 MR. HARRINGTON: Yes. I mean, if you
10 look at what was stated about the PPA, "if the PPA is not
11 approved or if it gets approved in a much different manner
12 than it's now written, would that put the Project on a
13 dead-stop?" And, this is Bartoszek: "It certainly
14 wouldn't be good for the Project. I mean, I guess, in
15 your alternative scenario, where it's approved in some
16 other form, I guess we'd have to see what that was. But,
17 certainly, it probably definitely wouldn't be good if it
18 was rejected. It probably wouldn't be good if it was
19 modified."

20 CHAIRMAN BURACK: Dr. Kent, did you have
21 something on this?

22 DR. KENT: I think Commissioner Ignatius
23 was first. Maybe she'll say what I want to say.

24 CMSR. IGNATIUS: Well, I'll give it a

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1 try. I would take a different approach than
2 Mr. Harrington. I think he's correct in saying that some
3 of the documents and testimony are that they want the --
4 lenders may want the PPA approved as submitted. But I
5 think it is now pending before the Public Utilities
6 Commission. Where that docket ends up is where it will
7 be. And, then, I think it falls to the lenders or any
8 other parties to decide what they want to do about it, if
9 the document is changed. So, I think it's the -- in my
10 view, the condition should be read as that "a Purchase
11 Power Agreement must be approved by the Public Utilities
12 Commission. And, if materially different, filed with the
13 SEC." And, then, not speculate as to what lenders may or
14 may not want to do. We'll just have to see what comes as
15 a result, if there's any change that's material.

16 MR. HARRINGTON: I think we're kind of
17 saying the same thing. I didn't necessarily hear anything
18 different there. That, if -- I'm trying to just get this
19 straight then. You're saying, if the Purchase Power
20 Agreement, as submitted, was not approved by the PUC, but
21 some variant on that was, and it was considered a material
22 change, then the Applicant would come back to the SEC with
23 something? That's why I'm not quite sure I followed.

24 CMSR. IGNATIUS: Right. And, I'm not

1 sure I know quite what the something is either.
2 Certainly, that the revised document, if there is such a
3 thing, be submitted to the SEC. And, if it's -- I guess
4 what I'm uncertain of is whether a provision that could
5 say "and the SEC take further action as needed" may be too
6 vague, that may not be clear enough. I don't want to
7 assume that any change to any document, whether it's a
8 financing document, the PPA, the final terms of the Fuel
9 Supply Agreement, whatever it might be, that "any change"
10 doesn't necessarily mean we're back here in another
11 proceeding. But there may be certain changes to certain
12 documents that would require that. And, since we don't
13 know if there will be and what it might be, I don't know
14 how we define that in the abstract. Maybe Mr. Iacopino
15 can figure it out.

16 MR. HARRINGTON: I would tend to agree.
17 I think that, you know, we certainly don't want it to come
18 back because there's been a minor change. But the
19 Applicant has made it pretty clear, in their comfort
20 letters, as well as their testimony, that they're really
21 counting on the Purchase Power Agreement as written.
22 Again, as Commissioner Ignatius said earlier, if that were
23 to change, so it was no longer to be financially
24 acceptable to lenders, they just wouldn't get to borrow

[DELIBERATIONS]

25

1 the money, and it probably will take care of itself. But,
2 nevertheless, the statute says that we're supposed to make
3 sure they have adequate financial capability. And,
4 they're saying that they have that with the presence of
5 the Purchase Power Agreement. And, I guess, depending on
6 that discussion we had earlier this morning, you might
7 even say, with the presence of the Purchase Power
8 Agreement, even if they don't get the various, fairly
9 range, in the large of \$40 million tax credits, that they
10 would still be financially viable. So, we have to have
11 some way to tie it to that. And, I'll let -- maybe Mike's
12 waving over there, maybe he's got some good wordsmithing.

13 MR. IACOPINO: I'm just looking for a
14 clarification. If I understand what both of you are
15 saying is that, in your opinion, for the -- for you to
16 make the finding that the Company has got the financial
17 capability, the Purchase Power Agreement with Public
18 Service should be a condition of the Certificate, number
19 one.

20 Number two, that you recognize that the
21 Public Utilities Commission will have to approve that,
22 that contract, so that that approval would be part of the
23 condition as well.

24 Number three, you recognize that the

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1 Public Utilities Commission might somehow modify that
2 agreement. And that, if, and this is where I'm asking my
3 question, if that agreement is modified, what is it that
4 you're asking for the Applicant to do at that point? To
5 provide this Committee with the modified agreement? To
6 make a determination of some sort? Or -- because there
7 are various options that you can --

8 CMSR. IGNATIUS: I would say that the
9 modified agreement be made part of the record in this
10 docket. And that, if any modification affects the
11 financial capability of the Applicant, there could be a
12 lot of modifications that have nothing to do with the
13 financial issues, but, if it were to affect the financial
14 capability in a material or in a substantial way, that
15 that be considered by the SEC. What I don't know is, do
16 we have to decide today whether we necessarily have a
17 proceeding to look at that or we determine that when we
18 review the documents themselves?

19 MR. HARRINGTON: If I could, just maybe
20 something that may be helpful, we did get a pro forma from
21 the -- it was confidential, but we did get one from the
22 Applicant, and it lists the sources of revenue on there.
23 So, this is, I'm assuming, was done with the assumption
24 that the Purchase Power Agreement, as submitted to the

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1 PUC, indeed becomes approved. Maybe we could simply say
2 "if there's a" -- "if the Purchase Power Agreement,
3 through the process at the PUC, comes out to be different
4 than the one that was actually submitted, that they
5 resubmit the new pro forma and indicate any changes. And,
6 that would be basically as much information as we have
7 now. I mean, this is what they were saying, based on
8 this, they have adequate cash flow and so forth to pay
9 their bills. Maybe that's a good way to do it. Because
10 he can't define what changes, as Commissioner Ignatius
11 said, you could -- you know, you might as well -- you'd
12 have to spend another three days reviewing the Purchase
13 Power Agreement and deciding which changes were
14 significant to which paragraphs. But, I mean, that's the
15 actual result of implementing the Purchase Power Agreement
16 is the pro forma. So, --

17 MR. IACOPINO: But it's not going to be
18 the change in the actual agreement that's going to make a
19 difference to the Committee. It's going to be whether or
20 not the change in the agreement affects the financial
21 capability of the Applicant.

22 MR. HARRINGTON: Correct. That's what I
23 think, anyways.

24 MR. IACOPINO: So that, upon filing of

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1 that, I suppose we could -- I'm thinking of it
2 procedurally, not substantively, but, procedurally, "the
3 amended PPA, along with any additional supporting
4 material, should be filed with the Committee. And, from
5 that point, the Committee will determine whether or not
6 there's a need for a further hearing."

7 CHAIRMAN BURACK: All right.

8 MR. HARRINGTON: Works for me.

9 CHAIRMAN BURACK: Yes. I mean, it
10 sounds like if -- I think, probably what we would want is
11 the Applicant to notify the Committee upon the completion
12 of the PUC's proceeding as to whether the PPA was approved
13 as requested by PSNH. And, if not, -- maybe what we would
14 want them to do is just to submit to us, tell us, was it
15 approved as proposed or requested, or in a different
16 format, provide us with a copy of the final approved
17 document. Show us if there is any change from the prior
18 version or the original requested version, what that
19 change is, and then provide us with documentation
20 demonstrating that, based upon this revised PPA, if it's
21 revised, that they have the financial capability to carry
22 out the Project. And, then, I mean that information would
23 come to me, as the Chair. I would review that, we'd
24 review that with counsel. We would determine, based on

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1 what was submitted to us, whether -- whether it appeared
2 necessary for us to confine a group to look at this or
3 whether it appeared that the documents clearly
4 demonstrated that, essentially, there wasn't. There might
5 have been a change, but it wasn't a material change, such
6 that we need to convene and deliberate further on this.

7 CMSR. IGNATIUS: That's acceptable to
8 me.

9 MR. HARRINGTON: Acceptable to me.

10 CHAIRMAN BURACK: Does that make sense
11 to you, Mike? Okay. Okay. There are -- there are two
12 other documents that we have received drafts of that I
13 believe we asked to have final versions of. One is the
14 Fuel Supply Agreement with Cousineau, and the other would
15 be -- actually, two others probably, the Pre-EPC Agreement
16 with Babcock & Wilcox, as well as what we were told will
17 be a new EPC Agreement with Babcock & Wilcox. And, a
18 question is, what conditions do we want to consider with
19 respect to those three agreements? Oh, there's another
20 agreement as well, which would be the agreement with
21 Homeland Renewable, which I don't believe we've seen.
22 And, that agreement with Homeland Renewable could, I
23 suppose, be an agreement with Fibrowatt, LLC, whichever
24 those entities it turns out to be.

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1 So, the question is, is it sufficient
2 for our purposes that we simply receive copies of those
3 final executed versions of those agreements or do we need
4 some kind of provision for those agreements, similar to
5 what we've just discussed for the Power Purchase
6 Agreement?

7 What I might suggest here is that, at a
8 minimum, the existence of the Fuel Supply Agreement, as a
9 final executed document, would need to be a condition
10 here, because that really has been a centerpiece of so
11 much of what has been discussed here, and which we've
12 deliberated with respect to the whole sustainability
13 approach and issues related to the use of the forest
14 resource.

15 MR. HARRINGTON: Mr. Chairman, will we
16 need to put something, a qualifier in there, say, that "a
17 Fuel Supply Agreement that's substantially based on the
18 existing draft"? So, we realize there could be some minor
19 changes. But we don't want, you know, we don't want them
20 to come back with a new Fuel Supply Agreement, one page,
21 "we will buy fuel", I'm being facetious here, but, I mean
22 that could be done and be in compliance with it, right?

23 CHAIRMAN BURACK: Yes. We could
24 certainly -- we could certainly include that. What about

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1 the Pre-EPC Agreement and EPC Agreement? Any thoughts on
2 these?

3 DR. KENT: I didn't quite hear you.
4 Could repeat that?

5 CHAIRMAN BURACK: My question is just
6 what conditions would we be looking for with respect to
7 the Pre-EPC Agreement and an EPC Agreement? That is,
8 should these be in any way condition precedent to their
9 being able to, for example, commence construction? Or, my
10 sense is, they would have to have those documents in place
11 and agreements in place in order to commence construction.
12 Or, does that not matter to us? But, regardless, do we
13 want, for purposes of having a complete record, do we feel
14 that we need to have, as a Committee, to have copies of
15 the final executed versions of those agreements?

16 DR. KENT: To the latter point, I would
17 say "yes". We would like the record to be complete. We
18 would like copies of those executed agreements. I think,
19 in a broader sense, what I'm most interested in is a
20 condition that requires that, in essence, the team that's
21 been proposed to us is the team that goes forward.

22 CHAIRMAN BURACK: Thank you. That is
23 another related set of issues, potentially, and a set of
24 conditions that we have looked at in other proceedings.

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1 Where we recognize that there could be a change in the
2 management structure.

3 And, typically, I believe, Mr. Iacopino,
4 and correct me if I'm wrong, what we've done is we have
5 required the applicants, at that point, the certificate
6 holder, to notify us, ideally, in advance, but certainly
7 promptly thereafter, of any changes in the senior
8 management structure of the companies, particularly of the
9 management entities involved with the facility. And, just
10 so that we are aware of those changes. And, if we feel
11 appropriate, can take action, and that would include their
12 providing us with who's leaving, who's coming in, and what
13 the qualifications are of the party or parties who are
14 coming into the project. Would that address your
15 concerns?

16 DR. KENT: Yes. If I understood
17 correctly, we will be notified -- we'll be notified of any
18 changes in senior individuals or I would say "companies",
19 and have it be our discretion whether to accept those
20 changes or not.

21 CHAIRMAN BURACK: Dr. Kent, I think the
22 way we've handled this in the past, and I would suggest
23 this for our consideration here, is that, with respect to
24 changes in personnel, senior personnel, we be notified of

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1 those. But it would be, I think, difficult, if not
2 impossible, for us to assert that we actually can decide
3 who comes and who goes, who retires, who doesn't retire,
4 who may be asked to step aside or not step aside. I think
5 we'd certainly want to be notified of those changes,
6 notified of the qualifications of people coming in. But
7 I'd respectfully suggest that I'm not sure we could or
8 should put ourselves in a position of being able to
9 approve or disapprove of the "individuals" who might be
10 involved in management of the facility or project.

11 What I think we could do and have done
12 in the past is, if there were to be, for example, a change
13 in the -- in the operating entity for the facility, we
14 could say "You need to let us know in advance of what
15 you're proposing. You need to demonstrate to us the
16 qualifications, the capability of that entity." And, we
17 could assert that we have the authority to approve those
18 before we make those changes.

19 DR. KENT: Allow me to play devil's
20 advocate here before we move on.

21 CHAIRMAN BURACK: Sure.

22 DR. KENT: We've been sold, in the
23 course of these hearings, these abilities of individuals,
24 as well as companies, particularly, with the LLB -- the

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1 LBB, we've been sold individuals more than anything else,
2 particularly with the establishment of all these limited
3 liability companies. We've been able to bank on the
4 experience, the capabilities of individuals, in large
5 part. And, I would be disturbed if, after we issued a
6 certificate, some key individuals disappear. If that's
7 going to be the case, I'd rather hear about it before we
8 issue a certificate. So, that's my premise. And, we can
9 move on, if you'd like.

10 CHAIRMAN BURACK: I hear and I
11 understand your premise. I would just suggest that, in
12 the -- just from a very practical standpoint, I don't mean
13 to be macabre about this, but a bunch of these people
14 could be out having dinner someplace and all, you know,
15 cross the street at the same time and something awful
16 could happen. And, that's a circumstance entirely out of
17 our control. And, those things can just happen. But,
18 likewise, people can retire, people can make other
19 personal decisions about their lives. And, I'm not sure
20 that we, even if we wanted to, could say to somebody "no,
21 unless you're going to stay involved with this project,
22 we're going to -- we reserve the right to revoke the
23 certificate" or to require -- because I don't think we can
24 mandate that somebody stay in a particular job or

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1 position.

2 DR. KENT: No, and that's not what I'm
3 saying. In my scenario, the Applicant is required to
4 provide us information that there's a change, which we get
5 to assess.

6 CHAIRMAN BURACK: Right.

7 DR. KENT: And, if they're replacing
8 somebody we felt was critical to the project, with
9 somebody who seems to have no experience, you know,
10 somebody's nephew looking for work, but isn't capable of
11 doing the job, then, I would like us to reserve some
12 ability to go, you know, "No. That's not what we bought
13 into here."

14 MR. IACOPINO: Can I just point
15 something out?

16 CHAIRMAN BURACK: Please.

17 MR. IACOPINO: Actually, I was going to
18 use a different -- a different example than his. I was
19 going to say, somebody in their management team wins the
20 Lottery and decides to retire. But I guess that's glass
21 half full versus half empty. But that's -- the difficulty
22 with that is that you are then regulating individual
23 activity, as opposed to the Applicant's activity. With
24 respect to the companies, though, where you have an

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1 engineering company that's hired, so that you know that
2 that engineering company is going to do a particular job,
3 and you have a construction management and operation
4 company, in this case, I guess its Homeland, you know
5 they're going to do a job. In the past, this Committee
6 has had, if there's going to be a change in that type of
7 management, like, for instance, I forget which power plant
8 it was, but switched from one management company over to
9 another management company. We had them, in that
10 certificate, there was a condition that they had to come
11 back and get approval before they did that. Now, that's
12 different, because you're assuming that they would hold
13 themselves out in the corporate world as being capable of
14 operating a power plant are, in fact, capable. And,
15 presumably, the Committee or experts that are available to
16 the Committee would be able to assess whether this new
17 operating company can do this job or not.

18 But, with individuals, it's very
19 difficult, because they're subject to so many other
20 issues. And, it's really -- and, the other question, I
21 guess, if I were going to write a condition like that, is
22 when? When is it that it no longer makes a difference
23 whether, for instance, Mr. Bartoszek is the president of
24 this company? When is it that that would change? I mean,

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1 do we have to, you know, when he retires at age 80, do we
2 have to come back and have some approval hearing on who
3 his replacement is? So, that's the other sort of
4 flip-side to the question as well, is when? If we're
5 going to have this condition, we probably ought to have
6 some kind of time frame in it.

7 DR. KENT: This is easily handled by not
8 referring to individuals, but referring to companies. For
9 example, LBB: What if they all take a payout and leave?
10 Then, what I'm asking is that, if the three individuals
11 that make up LBB decide to take a walk, we know it, and we
12 know that somebody capable, a company, another limited
13 liability company, however you want to structure this, we
14 don't have to talk about individuals, the necessary
15 skill-set will be in place to maintain the plant. To
16 finish construction, to operate it, whatever it takes.
17 That's what I'm looking for. So, we don't have to play
18 with individuals. I'm not talking about naming names.
19 But there has to be some assurance, at least for an
20 initial start-up period, and we know, if there's a change
21 here, we still have faith this is going to work. So,
22 however we want to handle that.

23 MR. HARRINGTON: Mr. Chairman?

24 CHAIRMAN BURACK: Yes. Mr. Harrington.

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1 MR. HARRINGTON: Well, she's been waving
2 her arm over there, let her go first.

3 CHAIRMAN BURACK: Director Muzzey.

4 DIR. MUZZEY: The one type of agreement
5 that I don't believe we've seen is the management
6 agreement that was referred to in the testimony, as to how
7 that management will be set up, particularly as ownership
8 changes from LBB to NewCo. So, would it be an appropriate
9 condition to get a copy of that final management
10 agreement, so we have a better understanding of its
11 ramifications? And, possibly, with the request to review
12 the agreement as it changes or if it changes, similar --
13 well, I'll leave it at that.

14 CHAIRMAN BURACK: Certainly, we heard
15 discussion about potential for agreements with various of
16 the individuals, senior individuals involved, is that what
17 you're referring to?

18 DIR. MUZZEY: Uh-huh.

19 CHAIRMAN BURACK: And, I think we were
20 told that those were still in the drafting phase. I don't
21 see any reason why we could not request copies of those.
22 Likewise, I know I may be getting a little ahead of
23 ourselves here, we've also been told that there is going
24 to be a major financial closing at some point here down

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1 the line, and those often can be very voluminous
2 proceedings. But, again, if we want to ensure that we
3 fully understand how things are, in fact, being
4 structured, it may be that it would be appropriate for us
5 to request a copy of whatever that final closing package
6 is, in terms of the financing and the restructuring of the
7 entities. I don't -- I think that would be a reasonable
8 request for us to make.

9 And, Dr. Kent, I think that would help
10 for us to get a sense of how things are restructuring.
11 But, likewise, I don't think it would be inappropriate, if
12 we wish to do it, to ask for notification of any -- any
13 future change in corporate structure or in the major
14 contractors who would be performing services for the
15 facility. And, when I talk about "major contractors", I'm
16 talking about the EPC contractor, as well as the
17 operational contractor. I wouldn't imagine we'd
18 particularly care, for example, about who was running the
19 snowplow operations at the facility, for example, if they
20 were going to contract that out. But, at least those two
21 contracts, presumably, if there were going to be changes
22 in those, we would want to be notified.

23 And, it may be, with respect to, for
24 example, construction contract or construction management,

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1 the EPC contract, it's up to us. Do we want to have an
2 opportunity to review and approve those, changes to those
3 contracts? Or, is it sufficient that we be notified that
4 there are going to be changes? Mr. Harrington.

5 MR. HARRINGTON: Yes. I just think a
6 couple quick things here. First, I think the idea of the
7 management contract is very important, because we haven't
8 seen that. And, it does show up as, in other documents,
9 as other people want it besides us, to see that it's there
10 and it's made with a company or an appropriately qualified
11 company. The only thing I think I'd probably put maybe a
12 little bit of a caveat on is the EPC, because a lot of
13 what we heard through the testimony was that Babcock &
14 Wilcox was doing the engineering, and that they were the
15 original people who engineered the initial project with
16 the initial boiler that was there. And, because of the
17 synergies there, there was going to be a lot of savings.
18 I think a statement was made in response to one of my
19 questions that they expected to come in at about half the
20 installed per kilowatt costs, based on the fact that they
21 were reusing -- I'm trying to slow down -- they were
22 reusing an existing -- I just saw my sign here -- reusing
23 an existing boiler. And, you know, that makes for a
24 substantial impact on the financials again. So, I think,

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1 if, for some reason, Babcock & Wilcox were to no longer be
2 associated with the Project, it would not only cause
3 delays in the cost associated with that, there would be a
4 large loss of technical knowledge there that is not the
5 same as saying "Well, we were going to hire Company A to
6 operate the plant, but now we've decided Company B can do
7 it, because they have really good people", and so forth.
8 This is a unique set of technical data, information, and
9 expertise that's associated with a particular company.
10 And, it was, after all, the Applicant who made a big point
11 about that, not us. So, maybe, if they were going to not
12 execute an EPC with Babcock & Wilcox, we might want to see
13 that and have some evidence that the -- whoever they did
14 it with had not only adequate technical resources, but had
15 the technical knowledge of the specific site and design
16 that was being applied here. Because, you know, that's --
17 the information that they have on the existing boiler and
18 the ways to modify it may not be available anyplace else.

19 CHAIRMAN BURACK: Okay. Thank you.

20 Director Muzzey.

21 DIR. MUZZEY: On Exhibit -- Applicant
22 Exhibit 65, there's a list of the contractors who LLB feel
23 are vital to the success of this Application. It's
24 Fibrowatt, PSNH through its PPA, Cousineau, Homeland, and

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1 Babcock & Wilcox. And, we've handled PSNH and the PPA
2 question as a separate condition. But perhaps Fibrowatt,
3 Cousineau, Homeland, and Babcock & Wilcox could all fit
4 into this condition that we're working on now, as
5 contractors who have collective responsibility for success
6 of the Project.

7 CHAIRMAN BURACK: Thank you. That's
8 very helpful. So, that the --

9 MR. IACOPINO: I think, Mr. Chairman, if
10 you're going to do that, I think what you want to do is
11 you want to make material -- make them make a condition
12 that they shall "finalize contracts that are materially
13 consistent with each of those entities, and that any
14 change in any of those entities would be subject to
15 approval by the Site Evaluation Committee."

16 CHAIRMAN BURACK: Does that make sense?
17 Does that address your concern, Dr. Kent?

18 DR. KENT: That's fine. Yes.

19 CHAIRMAN BURACK: Okay.

20 DR. KENT: That was much more eloquent
21 than I was putting forward. Thank you.

22 CHAIRMAN BURACK: Sometimes it takes a
23 little while to get to eloquence.

24 DR. KENT: It does take a while to work

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1 it out.

2 MR. IACOPINO: Well, actually, it's
3 still different, his issue is actually a little bit
4 different.

5 CHAIRMAN BURACK: Well, it was a little
6 different, but it's still --

7 DR. KENT: Well, it's the same end
8 point.

9 CHAIRMAN BURACK: Yes.

10 MR. IACOPINO: In writing this condition
11 for the Committee, assuming you eventually vote to impose
12 it, am I also to understand that, in addition to that,
13 with respect to the EPC contractor, the operator
14 contractor, who is Homeland, and the fuel supply
15 contractor, that we also want notice, but not approval
16 authority, for any changes in senior personnel in any of
17 the Applicant companies?

18 DR. KENT: Those companies, I wasn't
19 worried about personnel. I mean, it doesn't make any
20 difference to me what person is in those companies.

21 MR. IACOPINO: Well, I'm not suggesting
22 approval, I'm just asking if what you want is
23 notification, so that if, you know, Mr. -- I forget his
24 name --

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1 DIR. MUZZEY: Richmond?

2 MR. IACOPINO: Yeah. If Mr. Richmond
3 were to leave Cousineau, would you want notice of that?
4 Or, if Mr. Bartoszek was to leave Laidlaw, would you want
5 notice of that?

6 DR. KENT: Yes, because that's a limited
7 liability company, with three people. So, in essence, the
8 people are the company. And, there needs to be a
9 demonstration that those who took his place --

10 CHAIRMAN BURACK: So, the distinction
11 would be between what you described as the Applicant
12 company or entities, which are NewCo, PJPd, LBB, arguably
13 Aware. Basically, what you're suggesting, Dr. Kent, is
14 that, if there's a change in personnel, either in terms of
15 the Board of Directors or the officers or managing
16 directors of those entities, we'd like to be notified of
17 those changes, right? Correct?

18 DR. KENT: Are you willing to go there
19 now?

20 CHAIRMAN BURACK: No, "notice" is very
21 different from "approval" of somebody departing or
22 somebody else stepping in.

23 DR. KENT: Yes. I never meant it to be
24 approval of people coming and going.

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1 CHAIRMAN BURACK: Okay. All right.

2 Thank you.

3 MR. IACOPINO: I got it.

4 DR. KENT: My ineloquence.

5 CHAIRMAN BURACK: You understand where
6 you are? You'll be able to summarize all this for us in a
7 little while?

8 MR. IACOPINO: I got it, yes.

9 CHAIRMAN BURACK: Okay. Thank you.
10 Okay. Again, I don't know if you captured this here, but
11 I had suggested that we would I think want to see a
12 complete copy of the final closing package. Any issues
13 there?

14 (No verbal response)

15 CHAIRMAN BURACK: Okay. Something else
16 that we have discussed is a requirement that, prior to the
17 beginning of the construction of the facility, the
18 Applicant would have secured an approved Power Purchase
19 Agreement, we've already discussed that in part, as well
20 as all necessary financing for construction of the
21 Project. And, I believe the Applicant had informed us
22 that they would accept such a condition. This is similar
23 to a -- it would be similar to a condition that was agreed
24 to in the -- was it the Noble Project?

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1 MR. IACOPINO: Yes, I think.

2 CHAIRMAN BURACK: In the Noble Wind
3 Project. Is that something that we wish to see as a
4 condition?

5 DR. KENT: Yes.

6 CHAIRMAN BURACK: Okay.

7 DIR. MUZZEY: I have a question.

8 CHAIRMAN BURACK: Please.

9 DIR. MUZZEY: Would that extend to
10 Aware, NewCo, and PJPD as well?

11 CHAIRMAN BURACK: Well, this is --

12 DIR. MUZZEY: This is for the Project?

13 CHAIRMAN BURACK: This is for the
14 Project as the whole.

15 DIR. MUZZEY: Okay.

16 CHAIRMAN BURACK: So, whatever entity
17 is, in fact, in charge, they would have to meet that
18 condition. Which brings me to the next issue that I think
19 we had discussed and identified at various points along
20 the line, and that is a concern to ensure that, in fact,
21 whoever the new owner or owners are of the facility, that
22 they would honor the conditions of the Certificate. And,
23 well, maybe we'd want to come back to that at the very
24 end, just to make sure that we're sure that we've

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1 constructed that in a way that we think is going to
2 encompass any overarching issues that might be out there.

3 Another issue that we have discussed the
4 past couples days, and we heard some testimony about this,
5 is the issue of decommissioning and possibly dismantling.
6 And, the question is, what condition, if any, would we, as
7 a Committee, wish to have with respect to this concern? I
8 think what we know about this is that this was an issue
9 that was originally raised in the Community EFSEC
10 Committee, that there had, at least from what I've been
11 given to understand, there had been some talk and possibly
12 some initial, certainly, members of the community seeking
13 some form of a decommissioning plan and commitment and
14 related funding, but that that ultimately was not included
15 in the stipulation entered into between the City and the
16 Applicant, presumably because the Applicant provided other
17 things that the City was also seeking in exchange for a
18 decommissioning plan. But there are, you know, there are
19 any one of a number of ways we could approach this, or we
20 could leave this issue entirely on its own. And, I would,
21 you know, not deal with this issue at all.

22 So, I just want to get a sense from
23 folks as to where thinking might be on this?

24 Mr. Harrington.

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1 MR. HARRINGTON: Maybe a question,
2 because I'm not really sure. We're starting with a
3 brownfield site here that we've identified as having some
4 problems with. And, it's basically we've got this old,
5 inoperable black tar boiler. Is there a -- is there a
6 requirement or should we impose one that the Applicant
7 leave the site any better than they found it? In other
8 words, it's not in great shape right now. This isn't the
9 case, like what we're dealing with at Noble Wind or any of
10 the wind projects, where we're going into somewhat virgin
11 areas and tearing down trees and putting in roads and
12 putting up towers. This place is a big industrial center
13 right now, which I think we've all kind of agreed to, will
14 look a little better if Laidlaw goes forward than it does
15 right now.

16 So, I guess, and I'll throw this out,
17 because I really don't know the answer, what is the
18 standard that we would intend to hold it to? Do they
19 simply not leave anything, in 20 years from now, 30 years
20 from now, whenever, if the plant closes, do they make sure
21 that things aren't any worse than they are right now? Or,
22 do they have some obligation to convert this into
23 something else? Or, I just throw that out, because I
24 don't know.

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1 CHAIRMAN BURACK: Mr. Janelle.

2 MR. JANELLE: I guess my concern
3 regarding this issue would be that, if the site were
4 abandoned or stopped functioning for whatever reason, it
5 would be left safe and secure. And, maybe somebody needs
6 to tell us what "safe and secure" is. I don't know that
7 that necessarily means that there's nothing left on the
8 site. I mean, I think, from this development, we've seen
9 that the boiler itself has some value, and that might be
10 why these people -- why this Applicant ended up here.
11 But, with that said, if it's abandoned, the buildings and
12 the boiler and the site would need to be secured.

13 CHAIRMAN BURACK: Thank you. Your
14 comments are both, I think, very, very helpful. If you
15 look at the "brownfield" statute, for example, the
16 standard for coming onto a site and not having long-term
17 liability if you decide to leave it, essentially, is
18 "leave the site no worse than it was when you found it."
19 So, that's with one standard that we could sort of look to
20 as a model. But I think Mr. Janelle's point is a very
21 good one, is that, fundamentally, we do have to be
22 concerned about community safety and community health, and
23 ensuring that if, for some reason, this facility were to
24 cease operation for whatever reason, that it was not

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1 posing some imminent substantial threat or hazard to human
2 health or the environment. And, I'm not sure that, as we
3 sit here today, we know exactly what level of work or
4 effort would be required to do that. And, so, maybe what
5 we'd want to do is to have a condition that requires the
6 Applicant to develop a decommissioning plan, that might
7 sort of be a range of things that could be done, but they
8 develop that plan and bring it to us for approval. With
9 an understanding that we would approve that plan, and that
10 there would have to be some funding or bonding or
11 something of that nature in order to support that, that
12 level of effort. Essentially, ensuring that, if the
13 facility were to close, it would be closed in a manner
14 that would not present any imminent or substantial threat
15 to human health or the environment. And, effectively,
16 they would not be leaving the site in any -- certainly in
17 any worse condition than the condition in which they found
18 it. And, again, this would not be excusing them from any
19 other liabilities or responsibilities they might have
20 under state, federal or local laws or ordinances.

21 So, that's one approach that we could
22 take, recognizing that there is a concern here for
23 protection of those sort of very basic concerns. But, at
24 this point, not having sufficient information to be able

1 to quantify it.

2 MR. HARRINGTON: Yes, I think that, you
3 know, that's the real issue on the decommissioning. I
4 don't want to impose any type of overly burdensome thing
5 on the Applicant. But you have the situation where it
6 appears that the Applicant's basically sole asset, no
7 matter which one of these things in the little moving box
8 that you look at, is going to be this power plant. And,
9 if there was a catastrophic incident at the power plant,
10 an explosion, some type of, you know, the generator
11 flywheel flew off and started chopping up parts of the
12 plant, or whatever, and it was just looked at. And, it
13 can happen, Mike. It's actually killed people at power
14 plants. And, they go right through concrete walls,
15 etcetera.

16 But something like on that scale
17 happens, where the Company's main assets are the power
18 plant, and now the power plant is virtually not worth
19 much, unless you're willing to pump a lot, a lot of money
20 into, and probably is quite a bit of time where it doesn't
21 operate. It may be just the easiest thing for the Company
22 to do at that point, the financial point, is to just say
23 "hang it up", and go away. So, I think that, in order to
24 have some assurance that there's at least some funding

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1 available to put it in the state, as Mr. Janelle said, so
2 it's safe for the general public, and that it meets the
3 "brownfield" standard, that it's no worse than it was when
4 they found it, I think, not only do we need to have them
5 come up with a plan, but also they have to introduce some
6 funding mechanism for that. So, if a catastrophic event
7 does occur, then you're not left with "well, we don't have
8 any money to fix the plant, and we don't have any money,
9 now that the plant's not running, to do anything. And,
10 you can tell us we got to do it, but we don't have any
11 money." So, I think it's kind of important that something
12 be set up to protect that.

13 CHAIRMAN BURACK: I appreciate your
14 point about funding. I think, if we were to include such
15 a condition, we could ask that the Applicant propose a
16 structure, a funding that could ensure that the basics are
17 being satisfied. That is, that they're going to have
18 adequate funding to be able to drain the pipes, you know,
19 dispose of any hazardous chemicals that are on the site,
20 you know, ensure that the fences are up, that the doors
21 are padlocked. You know, those kinds of basic things,
22 basic fire protection measures, that kind of stuff.

23 And, my sense is that kind of thing
24 could probably, and, again, I think we'd want the

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1 Applicant to propose how they'd cover it, they have to
2 provide us a cost estimate. And, then, do they cover that
3 with a surety bond or is there some other manner in which
4 they would address that?

5 In terms of the kind of catastrophic
6 accident that you're describing, Mr. Harrington, I think
7 -- I would expect that, in most instances, there would be
8 liability insurance coverage --

9 MR. HARRINGTON: Oh, insurance, yes.

10 CHAIRMAN BURACK: -- that would probably
11 provide the bulk of that coverage. And, perhaps what
12 you're suggesting is we need to ask them to provide us
13 with assurances or some description of what the insurance
14 coverage is that they would be caring in order to address
15 those kinds of potential liabilities.

16 MR. HARRINGTON: Yes. That would --
17 maybe more realistic would be a series of changes in
18 environmental regulations that just made the plant no
19 longer financially viable to operate. And, in which case,
20 maybe there is, I don't know if you can get insurance
21 against the changing in government rules, I tend to doubt
22 it. In other words, there would be a bounty on your head,
23 Mr. Burack. But that could be a situation where the plant
24 just no longer became viable to operate. So, either, in

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1 the case of an accident, that they did have liability
2 insurance of at least sufficient to restore the safe to a
3 safe facility. And, in the case of other reasons that it
4 shut down, just have sufficient funding. And, I would
5 again suggest let the Applicant decide the best way to do
6 that.

7 CHAIRMAN BURACK: Okay. So, it sounds
8 like what we're talking about is asking or requiring the
9 Applicant to prepare, essentially, a decommissioning plan
10 for the -- and a cost estimate, which would include a
11 range of cost, you know, a cost estimate and a proposal
12 for how they would ensure that they could fund, meet those
13 obligations. Does that sound like --

14 MR. IACOPINO: I've actually looked at
15 it as a security requirement. Is that what you're talking
16 about?

17 CHAIRMAN BURACK: Yes, I think a
18 "security requirement" would be a very good way of
19 describing that.

20 DR. KENT: Yes, that's more comfortable
21 than -- I was getting -- the word "decommissioning" makes
22 me a little nervous, --

23 MR. HARRINGTON: Yes.

24 DR. KENT: -- because that can have much

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1 greater implications. If the fundamental goal here is to
2 have a safe, secure facility, if for some reason they
3 should terminate operations, that makes sense. I would
4 want to talk, make sure we're clear with the Applicant, so
5 we don't get a big plan that's costly and --

6 MR. IACOPINO: And, in addition, if I
7 understand, there was a second condition that was just
8 proposed, which is that the Committee be provided with a
9 copy of the liability insurance for the plant.

10 CHAIRMAN BURACK: I don't know if we
11 necessarily need to have a copy of the liability insurance
12 policy itself. I think it would more just be a
13 declaration sheet, just proof --

14 MR. IACOPINO: Proof of liability.

15 CHAIRMAN BURACK: -- proof of liability
16 insurance coverage, and, to the extent applicable, other
17 insurance coverages.

18 DR. KENT: If I could just reinforce the
19 notion that I think Director Muzzey brought up. The value
20 of this site to the Applicant was that there was already
21 something there. So, we would like to retain the
22 improvements they make, and just make sure there's no
23 mishaps if they go out of business and somebody else comes
24 in.

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1 CHAIRMAN BURACK: Thank you. Okay.

2 DIR. MUZZEY: Excuse me?

3 CHAIRMAN BURACK: Yes, Director Muzzey.

4 DIR. MUZZEY: Is a time frame needed for
5 the completion of that plan? Is that a typical part of
6 the condition?

7 MR. IACOPINO: Yes. There would be a
8 time frame.

9 MR. HARRINGTON: It's needed prior to
10 the start of operation. It gives them the whole
11 construction period.

12 MR. IACOPINO: Well, I think it would
13 have to be prior to starting construction, prior to
14 commencement of construction, if you're going to make them
15 bonded and whatnot. You know, would you want them to
16 start construction -- it's up to you, because it's
17 actually a judgment call for you all. Would you want them
18 to start construction without having the benefit of the
19 plan in place or are you comfortable in making it before
20 operation or at some later or some earlier time? Or,
21 something as simple as 30 days from the date of this
22 order? I mean, it's up to you all. You've got the whole
23 range of possibilities.

24 MR. JANELLE: Commissioner?

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1 CHAIRMAN BURACK: Mr. Janelle.

2 MR. JANELLE: I guess I would suggest it
3 should be prior to the start of construction. I think,
4 if, for some reason, we didn't get this plan, it's going
5 to be much difficult to stop after construction occurs in
6 order to take recourse than if it were prior to
7 construction. It seems like that trigger should be prior
8 to construction starting.

9 MR. HARRINGTON: I would just add to
10 that, because that, in these hearings in the past, and I
11 think even in this one, the start of construction is
12 sometimes a very non-defined thing. It could mean as much
13 as placing a large order for components that was a
14 purchase order that couldn't be canceled might qualify.
15 So, maybe we use the word "the start of physical
16 construction of the site" or something like that, so it
17 doesn't tie them down from ordering something, where they
18 don't intend to actually start doing any work on the site
19 for another two or three months.

20 MR. IACOPINO: I think we've actually
21 used the term "actual construction" --

22 MR. HARRINGTON: Okay.

23 MR. IACOPINO: -- in previous dockets.
24 And, we've also had conditions that were based upon

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1 construction above a certain elevation as well, but I
2 guess that's not going to apply in this case.

3 CHAIRMAN BURACK: But, just to be clear
4 here, Mr. Iacopino, your suggestion is that we could have
5 a condition that says that "we will require a submission
6 of this plan prior to commencement of construction", not
7 that we have to approve the plan, but we want it, before
8 actual construction, we want them to have at least
9 submitted the plan. We would then presumably review it in
10 a timely manner. And, if we felt it, you know, either
11 approve or disapprove of the plan.

12 But you're not suggesting that the plan
13 would include a surety bonding for actual construction of
14 the plant itself? Was that --

15 MR. IACOPINO: No, no. Not for
16 construction, --

17 CHAIRMAN BURACK: Okay.

18 MR. IACOPINO: -- but for the closure of
19 the plant.

20 CHAIRMAN BURACK: Right. Okay.

21 MR. IACOPINO: Is what I heard. This is
22 a decision for you all to make.

23 CHAIRMAN BURACK: Yes. No, that's what
24 I've heard as well.

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1 MR. HARRINGTON: Yes.

2 CHAIRMAN BURACK: And, I just wanted to
3 make sure that I had not overlooked something that
4 somebody had said, because I do believe there was some
5 discussion at some point here about whether or not there
6 could or should be surety bonding for the actual
7 construction itself. And, I'm not sure we have required
8 that in other projects or if that's something that would
9 be necessary or appropriate to require here. So, I just
10 wanted to put that issue out there, if there were anybody
11 who felt that that was necessary.

12 Having said that, I would not be
13 surprised if some or all of the institutional lenders for
14 a project of this type or institutional investors, if they
15 themselves would not want to see some kind of surety
16 bonding, just to ensure, for example, that if, for
17 whatever reason, part way through the construction, an
18 entity like Babcock & Wilcox were to be unable to complete
19 the Project, there was an entity -- there was funding
20 available there to come in and have somebody else complete
21 the work.

22 So, I'm not hearing any need for us to
23 insist on a surety bonding provision?

24 (No verbal response)

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1 CHAIRMAN BURACK: Okay. Again, we'll
2 come back at the end to this issue of dealing with the
3 various owners of the facility and how they would be bound
4 to the conditions of the Certificate.

5 Let's move onto the issue of the
6 "interference with orderly development of the region."
7 And, I think the first document that probably we should
8 talk about here is the Stipulation between the City and
9 the Applicant. And, again, this is --

10 MR. IACOPINO: City Exhibit 5.

11 CHAIRMAN BURACK: -- City Exhibit 5.
12 And, the question is whether we wish to adopt this exactly
13 as proposed or whether there are any modifications that we
14 would seek to make to this document? Commissioner
15 Ignatius.

16 CMSR. IGNATIUS: Thank you. I raised
17 earlier today the possibility of creating an additional
18 requirement beyond the proposed conditions. That the City
19 develop with the Applicant some sort of community
20 oversight board or some other organization that would
21 allow it to monitor the development of the Project, be a
22 clearing house of information for inquiries about it from
23 the community, and even address complaints that it hears
24 from people within the community. The thought is not to

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1 create anything with jurisdiction taken away from the SEC,
2 but to realistically recognize that there will be little
3 disputes, there will be misunderstandings, there may be
4 areas where people getting together and talking about it
5 would be of real help in the community, and to think that
6 you should always have to schedule something with the Site
7 Evaluation Committee to address those is not going to be
8 helpful to people in Berlin or to the plant itself.

9 And, so, it would -- it's something that
10 would be an advisory group or something, you know, I'm not
11 sure even what you'd call it. It wouldn't have the
12 ability to change documents or to impose new conditions,
13 but I think still could be very valuable. I don't have a
14 model in mind, other than recollections that in Lempster
15 there was something along these lines having to do with
16 noise issues, which was the major contention, if I'm right
17 about that. Mr. Iacopino may have a better recollection
18 of that. And, if there's any other models we can turn to,
19 that might be helpful.

20 MR. HARRINGTON: Yes. I think that
21 sounds like a good idea. It may actually be helpful to
22 everybody, including the Applicant. Because, if they have
23 to come back to the SEC, sometimes it can tend to be
24 cumbersome and difficult to schedule. But maybe we could

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1 use that, and the name escapes me, someone knows it, what
2 was that thing that Berlin already has, that they reviewed
3 --

4 CHAIRMAN BURACK: The EFSEC Advisory
5 Committee?

6 MR. HARRINGTON: Yes, the EFSEC Advisory
7 Committee, and just make them be at least the initial
8 arbitrator with any disputes having to do with this
9 Stipulation Agreement. Then, and, hopefully, it would be
10 much easier for Laidlaw and the City to work it out on
11 their own turf, on their own schedule, rather than trying
12 to schedule something down here to go through it.

13 Now, Mike's going to tell us that's not
14 legal?

15 MR. IACOPINO: No. No. Not at all.
16 What I'm going to tell you is what's been done in the
17 past, so that you know, and, obviously, you all can decide
18 whether this is a good idea or not.

19 In the past, this Committee has done two
20 different types of things. What Commissioner Ignatius is
21 remembering from the Lempster Wind docket was a technical
22 working group, it wasn't actually on noise, but it was on
23 the follow-up wildlife studies that were to be done. And,
24 that was a -- sort of a committee structure, that included

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1 somebody from U.S. Fish & Wildlife, I believe somebody
2 from Fish & Game here in New Hampshire, some
3 representatives of the towns that were parties in that
4 case. And, they had a specific role, which was to
5 basically review the wildlife studies that the Applicant
6 was required to do after construction in that particular
7 case.

8 We have also had, in the Tennessee Gas
9 Pipeline case down in Londonderry, for the Londonderry
10 Expansion Project, we appointed an ombudsman, who was
11 somebody that the Applicant paid, and that individual's
12 role was to basically be the go-between for complaints,
13 any complaints that were raised, either about the
14 construction or operation of that project. And, that was
15 a single person. And, so, we've done it two different
16 ways in doing it.

17 Now, obviously, the advantage of having
18 an ombudsman, as opposed to a Committee, is that it's a
19 single person, you know who's going to be, you know, be
20 conducting the task. But you may not get as broad of an
21 area of knowledge as you get if you have a committee of
22 people. So, we've done this sort of thing that
23 Commissioner Ignatius has suggested a couple of times in
24 the past. It can be done either through Committee or

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1 through a single individual, who, in the past, we have
2 entitled an "ombudsman". And, actually, it turned out to
3 be an ombudswoman, but that was the term that went into
4 the certificate.

5 CHAIRMAN BURACK: In the case of the --
6 in the case of both of these, was there some sort of prior
7 discussion among the parties about this condition or was
8 this something that was formulated by the Committee?

9 MR. IACOPINO: I believe, in the
10 Lempster case, it was something that the parties had
11 discussed beforehand and agreed on, or at least most of
12 the parties.

13 CHAIRMAN BURACK: Uh-huh.

14 MR. IACOPINO: We never got all of the
15 parties to ever agree on anything in that case. But the
16 ombudsman position in the Tennessee Gas case I think was
17 just a condition that was imposed through deliberations on
18 the pipeline company. There was a large, in that
19 particular case, there was -- it sort of went hand-in-hand
20 with the AES facility in Londonderry, because that's the
21 reason why the pipe was going to be constructed. And, so,
22 there was a large community involvement in that docket.

23 MR. HARRINGTON: I would just again, --

24 CHAIRMAN BURACK: Mr. Harrington.

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1 MR. HARRINGTON: -- see if I'm wrong on
2 this, was this agreement actually negotiated by the Berlin
3 Advisory Committee?

4 MR. IACOPINO: No.

5 MR. HARRINGTON: Okay. I'm getting --
6 okay.

7 MR. IACOPINO: You talking about
8 Exhibit 5?

9 MR. HARRINGTON: Yes.

10 MR. IACOPINO: My understanding of
11 Exhibit 5 is that the Advisory Committee presented that to
12 the City. And, then, that the final decision was through
13 negotiation with the City's lawyer, the Town Planner and
14 the Mayor, and whoever else makes the decisions formally
15 for the City, because the EFSEC Advisory Committee was an
16 informal group. They didn't have any legal authority. So
17 that, it was actually the City that negotiated the final
18 agreement, which is Exhibit 5. And, you might see some
19 differences between Exhibit 13 and Exhibit 5, Applicant's
20 Exhibit 13 and City Exhibit 5.

21 MR. HARRINGTON: Yes. The reason I
22 brought that up, because I can't remember where, but I
23 thought I had read someplace that the conditions that were
24 in here were voted on unanimously by that Advisory

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1 Committee, with the exception of a couple of provisions
2 where the vote seemed to be 15 to 1, or something like
3 that.

4 MR. IACOPINO: You're referencing the
5 first page of Applicant's Exhibit 13.

6 MR. HARRINGTON: Okay.

7 MR. IACOPINO: And, it does indicate
8 which exhibits -- which agreements were unanimously
9 adopted and which ones there were dissenters in. But 13
10 is not the final agreement; the final agreement is City
11 Exhibit 5.

12 MR. HARRINGTON: Okay. Well, then,
13 maybe the best way to address this is simply to say "we
14 think it would be beneficial to have some type of local
15 authority", or whatever you want to call it, "that would
16 have the ability to at least try to arbitrate disputes
17 that come about as a result of different interpretations
18 of Exhibit 5." And, simply ask the City of Berlin and the
19 Applicant to come up with a method that's acceptable to
20 both of them. And, if they don't, we could impose
21 something. But, it would seem to me, let them work it out
22 themselves would probably be the best solution.

23 CHAIRMAN BURACK: Mr. Northrop.

24 MR. NORTHROP: That's actually exactly

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1 what my point was going to be. Maybe the Certificate
2 condition could be that we require the Applicant to go
3 back to the City of Berlin and discuss or negotiate the
4 best way that they -- the two of them can agree on how to
5 create either a committee or ombudsman or an ombudsperson.
6 And, then, once they come to some sort of agreement or
7 figure out the best way to do it, that they would then
8 inform the Committee, inform us about what it is, and I
9 don't know if we would have sort of ultimate approval over
10 it or not, but at least give them -- include as a
11 condition that the Applicant has to go back to the City
12 and discuss that, figure out the best way to do it, and
13 then just let us know what that is or what their
14 negotiations end up with.

15 CHAIRMAN BURACK: Director Muzzey.

16 DIR. MUZZEY: It seems as though we did
17 hear some testimony that either the citizens group or the
18 City had already talked with the Applicant to come up with
19 some sort of arbitration stipulation or that type of
20 thing, and that had failed for some reason. And, I don't
21 know if we need to be thinking of that before we ask them
22 to go back and try again.

23 CHAIRMAN BURACK: You recall that from
24 testimony?

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1 DIR. MUZZEY: I believe it was --

2 MR. NORTHROP: I don't remember that,
3 but I think it --

4 DIR. MUZZEY: Was that in our public
5 comment from one of the committee members who said that
6 type of stipulation fell out of the agreement?

7 MR. HARRINGTON: Yes, I think he was
8 talking about the decommissioning or the decommissioning
9 stuff. At least one person did speak about that falling
10 out. Was it a Mr. McCue?

11 CHAIRMAN BURACK: Mr. McCue, I believe,
12 had addressed that issue. And, again, if we adopt the
13 condition that we discussed a short while ago, we would be
14 addressing some of those issues relating to
15 decommissioning.

16 DIR. MUZZEY: Well, I may be remembering
17 the wrong thing then.

18 CHAIRMAN BURACK: Okay. All right.
19 Now, I don't specifically recall a discussion about any
20 kind of a dispute resolution process that would be an
21 intermediary between, no process at all with having to
22 bring every concern here to the Site Evaluation Committee.
23 I think we -- I believe we heard testimony from the City
24 and possibly from others acknowledging that, ultimately,

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1 any enforcement of the conditions of the Certificate would
2 depend upon this Committee, --

3 DIR. MUZZEY: Right.

4 CHAIRMAN BURACK: -- because we have the
5 authority here. Which we cannot -- which we cannot
6 delegate. And, I think it's important to recognize that,
7 if we were to have such a condition here, it would be that
8 we're essentially asking them, and I'm not -- I'm
9 comfortable with the notion of a condition that
10 essentially puts this back to the City and the Applicant
11 to come -- to bring something back to us. But what we'd
12 be asking them to do is to see if they can collectively
13 come up with something that's an informal mechanism that
14 would not be -- would not be binding, would not be --
15 would not have any explicit legal authority or power to
16 bind parties or to enforce any aspect of the agreement,
17 but could be an opportunity, at the local level, for
18 issues to be raised and potentially for concerns to be
19 addressed and resolved before they have to be brought here
20 to the Committee.

21 MR. IACOPINO: And, just for the
22 Committee's edification, too. Of course, it is possible
23 that, you know, we have more authority, obviously, over
24 the Applicant than any individual and the City of Berlin.

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1 And, it is possible that, if somebody believed that there
2 was some violation of the conditions of the Certificate,
3 whether it's -- I don't know, you name it, and they choose
4 to opt out of that informal process, there's not a lot we
5 can do. If they file something with us, you will have to
6 act one way or the other on it.

7 As a practical matter, when those things
8 have happened in the past, they have often been referred
9 to me. And, I've said to the individual "have you talked
10 to the ombudsman?" Or, "have you talked to the Committee
11 that we've set up?" And, many times, people just don't
12 know about that. But that, as a practical matter, that
13 that happens. But, as a legal matter, if somebody
14 insisted that there is, in fact, a violation of the terms
15 of the Certificate, and they want a ruling on it from this
16 Committee, you're pretty much going to have to provide
17 them with the process to do that.

18 CHAIRMAN BURACK: Right. And, again, I
19 think, from the perspective of the Committee, that is our
20 obligation, that is our responsibility. And, we would
21 not, I don't think, want to be sending the message that
22 we're trying to in any manner walk away from
23 responsibilities that we have. What I'm hearing, by
24 seeing if there is some formulation of an informal local

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1 group, this is more just a way of providing an additional
2 mechanism that might more quickly and, in many cases, less
3 expensively address at least some issues of concern. But,
4 certainly, parties would have -- would have the ability
5 any time, as they do right now with any projects that the
6 Committee has issued certificates for in the past, to
7 bring concerns to the Committee about non-compliance, and
8 nothing should foreclose that opportunity.

9 Commissioner Ignatius.

10 CMSR. IGNATIUS: Mr. Chairman, I think
11 all of that makes sense. I would encourage, as this is
12 being drafted up, my preference would be to say that we
13 think the ombudsman is what we're looking for, and then
14 leave to the City and the Applicant to come back with a
15 proposal for us, rather than being completely open-ended.
16 I say that, because this is a small city, it's got a lot
17 on its plate right now. There are a lot of other
18 community advisory groups with some HUD money that they
19 have received and some ARRA money that they have received
20 for other projects. Even within this project, there is
21 the -- if the New Market Tax Credit money comes through,
22 there will be some sort of loan committee. I just think
23 they have got a lot to do, and it probably turns to the
24 same people over and over again.

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1 So that, if, for this purpose, if we
2 were to ask that an individual be designated, and that an
3 individual be paid for, so we're not imposing more work
4 without any funding for it on the community, but through
5 which boards tend to end up having to absorb, I think that
6 would be preferable.

7 CHAIRMAN BURACK: Is it your suggestion
8 that this, if I'm understanding you correctly, that the
9 expectation would be that an ombudsman would, whether it's
10 a part-time or a full-time position, that, effectively, it
11 would have to be funded by the Applicant?

12 CMSR. IGNATIUS: Yes.

13 CHAIRMAN BURACK: Is that your
14 suggestion?

15 CMSR. IGNATIUS: Yes. Along the lines
16 of the Tennessee Gas Pipeline precedent that Mr. Iacopino
17 mentioned.

18 MR. IACOPINO: The other thing I would
19 point out, it doesn't even necessarily have to be somebody
20 who's even a full-time or part-time employee. It could be
21 a consulting -- you know, a consultant's role that gets
22 paid by the hour when it becomes necessary. I think
23 that's actually what they did with Tennessee Gas.

24 CMSR. IGNATIUS: One other thing. I

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1 would suggest that this be for the duration of the
2 construction, and perhaps the first 12 months of
3 operation. That this isn't a long-term requirement in
4 perpetuity, but during the period where there will be a
5 lot of issues to keep track of, on status of compliance
6 with different terms, inquiries about or complaints about
7 the hours of the trucking, or there were more than 16
8 trucks queued on the road. You know, the sort of little
9 details that are going to at issue, especially at the
10 start, that it be for that sort of time period.

11 CHAIRMAN BURACK: Okay. Thank you. Any
12 other thoughts on this issue? Dr. Kent.

13 DR. KENT: I'm going to be contrarian,
14 issue a warning. In the absence of a proposal, a joint
15 proposal from Berlin and the Applicant, this whole issue
16 feels frivolous, beyond the SEC's boundaries, and
17 unnecessary. In each party's self-interest, they're going
18 to be talking to each other, not just to resolve disputes,
19 but in partnership for more positive activities. And, it
20 doesn't feel to me like we need to be involved in this.
21 It feels like something we can let go and let it work
22 itself out. And, if there's a major complaint that
23 involves the SEC, they will come back to us. But I'm
24 quite sure that the City and the Applicant are going to

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1 communicate, whether we tell them to communicate or not.

2 CHAIRMAN BURACK: Thank you. And, I
3 appreciate your sharing that perspective. I think, if I'm
4 understanding you correctly, Commissioner Ignatius, the
5 concern is not so much the City itself communicating with
6 the Applicant, or vice versa, it's members of the public
7 not having a clear avenue to turn to, if they have
8 questions and concerns about the Project?

9 CMSR. IGNATIUS: That's right.

10 CHAIRMAN BURACK: Is that the concern
11 you're trying to address?

12 CMSR. IGNATIUS: That's right. And, I
13 was just whispering to Mr. Harrington if had
14 Ms. Laflamme's testimony close at hand, I didn't bring the
15 transcripts. There was something she said, and I meant to
16 look it up and forgot, that made me think she was thinking
17 "Boy, you guys are going to have a lot to keep track of
18 when disputes arise about all of these terms." Now, maybe
19 I completely imagined that. But I made a note to myself
20 on the document when that came up, "is there a way to get
21 the City more involved in review and helping out when the
22 inevitable disputes arise?" So, that's sort of the
23 underlying reason why I brought this up in the first
24 place.

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1 CHAIRMAN BURACK: Do you think that this
2 arose in the context of her oral testimony or do you think
3 this is -- her oral testimony?

4 CMSR. IGNATIUS: It was when she was on
5 the stand.

6 CHAIRMAN BURACK: Okay.

7 CMSR. IGNATIUS: And, again, it may just
8 be something in my mind and she never actually said it.
9 But that's the impression I have.

10 DIR. MUZZEY: I'm getting to that point,
11 too.

12 CMSR. IGNATIUS: I have a very vivid
13 life going on in my head. It gets in the way sometimes.

14 CHAIRMAN BURACK: Anybody have that
15 testimony?

16 DIR. MUZZEY: Yes, I've been looking
17 through it, but I haven't found anything like that yet. I
18 did find the place where she asked that this Committee
19 enforce them, but I'll keep reading.

20 CMSR. IGNATIUS: Well, and that may be
21 all that it is. Sort of assuming that we were going to
22 play a real enforcement role that, in my mind, thinking of
23 other cases I've been involved in, thought, "hmm, I'm not
24 sure that we can really play the kind of role she may be

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1 imagining we will be able to play."

2 CHAIRMAN BURACK: Well, I -- and, it may
3 be that what she is referencing is that, in the context of
4 a city and a city planner, where you have planning and
5 zoning ordinances, as well as fire and safety ordinances
6 and all of those kinds of things that you have to enforce,
7 that there is a very significant amount of work
8 potentially involved in undertaking that kind of effort.
9 And, maybe she was thinking that we would be having
10 routinely those kinds of issues as a body, as this
11 Committee, with this facility.

12 Mr. Harrington.

13 MR. HARRINGTON: Maybe one thing, and I
14 don't know, this is getting to be, because of the time
15 factor on this, but, if we do, if this certificate goes
16 forward and everything, which there will be time to work
17 this out because construction is not starting next week,
18 simply request that the Applicant and the City come back
19 to us on how they expect that the Stipulation Agreement --
20 they both agreed to the Stipulation Agreement. So, how
21 did they anticipate it being enforced? Did they expect
22 that, you know, Mike Iacopino is going to be in Berlin two
23 times a week, or this Committee is going to be there once
24 a month, or did they have some other mechanism in mind?

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1 They're the ones who come up with the provisions. They
2 must have some idea about what they thought the
3 enforcement mechanism was going to be.

4 And, if they thought it was going to be
5 just informal, as Dr. Kent said, then maybe we'd leave it
6 at that. If they are expecting, as maybe it was implied
7 by Ms. Laflamme's testimony, that "well, once you adopt
8 these, then they're yours, SEC, and we expect you to
9 enforce them. And, you know, what's the telephone number
10 we can call 24/7 to get enforcement?" That means we
11 should have to look at some other option, I would think,
12 from that being the only one, because we're just not set
13 up to have a daily -- being a daily enforcement agency.

14 CHAIRMAN BURACK: Dr. Kent.

15 DR. KENT: In no way was I imagining
16 "informal communications". We have a political entity
17 we're dealing with, with departments, elected officials,
18 all the pieces are in place. So, to suspect that we would
19 need to create a new entity to communicate with a business
20 they agreed and welcomed to town just seems superfluous.

21 MR. HARRINGTON: Well, I'm not
22 disagreeing necessarily. I guess my question would be is
23 that, you know, someone goes in here and says they have a
24 problem on, you know, when the trucks are showing up or

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1 when they don't. "I looked out, and the trucks aren't
2 supposed to show up until 6:00, and they were getting here
3 at 10 minutes of 6:00." So, they call who? They call the
4 Mayor's Office. And, the Mayor, if they're willing, from
5 the City of Berlin's perspective, saying "Oh, yeah. We
6 signed the agreement. We'll send a police officer down or
7 a code enforcement officer, whatever the appropriate
8 person is, and we'll call someone at Laidlaw and "hey,
9 your trucks are getting there too early. Better let them
10 know. Take care of it.""

11 But, if, on the other hand, their
12 position is going to be "That's an SEC problem. Here's
13 Mike Iacopino's number." Then, I think we ought to just
14 know that in advance, to make sure that that's not going
15 to be the case.

16 It might be as simple as just asking
17 them, the two parties, "How do you anticipate the
18 Stipulation Agreement being enforced? And, when there's
19 issues that arise from the Agreement, how do you think
20 they're going to be handled?" Because, really, no one
21 said anything about how it was going forward, at least
22 that I can find anyways. You found something.

23 CHAIRMAN BURACK: Director Muzzey.

24 DIR. MUZZEY: I may have found, on Page

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1 32, --

2 MR. HARRINGTON: What day?

3 DIR. MUZZEY: August 25th, in the
4 afternoon, Page 132. It's actually Mr. Harrington who
5 asked a question: "There's a lot of things in here that
6 are sort of unique to Berlin, as compared to being
7 internal to the plant, having to do with noise ordinances
8 and so forth. How would you anticipate those would be
9 enforced?" And, then, she answered: "I think, as Attorney
10 Van Oot said, we're hoping that it's somehow wrapped into
11 conditions or stipulations laid out with this Project so
12 that it's enforceable back to this particular -- as far as
13 I understand, we're not going to be able to have local
14 zoning to enforce some of these things, and that's why we
15 want to tie it to the Certificate."

16 So, what I believe she's saying is that
17 their city ordinances don't cover some of these things,
18 and they don't have the authority to enforce them. So,
19 they want -- the City would like the SEC to enforce them.

20 MR. JANELLE: Or, are they saying that,
21 "because it's not written in an ordinance, they don't have
22 the authority to enforce them?" But, if it were
23 conditioned as part of our approval, that would give them
24 the authority, and then they could physically monitor and

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1 enforce the requirements.

2 I think that's the clarification that we
3 need.

4 DIR. MUZZEY: Well, then, our condition
5 would have to grant them the ability to enforce these
6 stipulations, because I don't believe they currently have
7 that ability.

8 CHAIRMAN BURACK: I want to try to move
9 this along here. I think the first issue that -- there
10 are really two separate issues that we're addressing. One
11 is a dispute between the City and the Applicant. That is,
12 is the Applicant, in fact, abiding by the stipulations, if
13 we were to adopt them as conditions of the Certificate?
14 And, it seems to me that, clearly, if there were a dispute
15 that the parties could not resolve as between themselves,
16 the only option available to the City, most likely, would
17 be to petition and write a letter to the Committee asking
18 us to look into a matter and to take appropriate action,
19 to take enforcement action.

20 And, really, the only question would be,
21 do we need to ask the City and the Applicant to come up
22 with some kind of informal dispute resolution process that
23 they might agree to before they would bring such disputes
24 to us? Not that they would be -- we couldn't require them

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1 to engage in an informal dispute resolution, but we could
2 suggest that it may provide them with a more rapid remedy
3 to some situations than coming here first.

4 So, I certainly would have no objection
5 to having a condition that asked the parties to work
6 together and see if they can propose some kind of an
7 informal dispute resolution, they can agree to some
8 informal dispute resolution process up front, so that it's
9 already determined how these things might be dealt with,
10 if that makes sense. Okay?

11 The next issue, which is really where
12 the ombudsman would come in, would be in a circumstance,
13 if we were concerned about the possibility that members of
14 the public could have questions or concerns about the
15 Project and not otherwise have -- have an understanding as
16 to where they might turn for answers or for a response or
17 for protection of their rights. Again, understanding
18 that -- I mean, yes. Again, I think any party who
19 believes that there is a violation of a condition of a
20 certificate that we issue could write us a letter. They
21 don't have to have probably any formal, legal standing.
22 We could decide what action we were going to take or
23 whether we were going to address it at all. But, I think,
24 any party could notify us of a violation. Again, the

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1 question is, do -- would we want to ask -- suggest to the
2 parties that it, and particularly to the Applicant, that,
3 if nothing else, it may be in their own self-interest and
4 best interest to develop a plan for how they might try to
5 informally resolve those kinds of issues, short of them
6 having to be brought here. And, so, I don't know if this
7 is something we can definitively require them to have a
8 mechanism in place. But, again, I think it could be
9 constructive, if we were to have a condition that asked
10 the Applicant to propose a process or a structure that
11 would provide for some kind of public interaction.

12 MR. HARRINGTON: Yeah, I think that that
13 would work. And, I think it's important we don't also
14 forget here, even though most of what we heard was
15 positive testimony, and the so-called thousands of
16 petitions that no one can find, but there was also some
17 people who were opposed to this. And, some of the people
18 that live close, I mean, I'm quite sure they're going to
19 be at least sometimes out there with a clock, and "5:59,
20 ha, I see a truck. That's a violation." And, maybe
21 giving them a way to deal with that immediately, and on a
22 local basis, is going to be much better in the long term
23 for everybody, than having the response be "well, here's
24 the address of the SEC. You'll probably get something

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1 back in the mail in a couple weeks." It just seems to me
2 it would be in the interest of all parties to see if could
3 at least propose something like that.

4 CHAIRMAN BURACK: Okay. I think we have
5 a sense of this, and I hear that we may not have unanimity
6 on this, but I think I have a sense, I think. Do you have
7 a sense of what a condition would look like?

8 MR. IACOPINO: Yes. And, you want me to
9 address that sense right now? There's actually two
10 conditions.

11 CHAIRMAN BURACK: Sure. Okay.

12 MR. IACOPINO: The first is the
13 "ombudsman" concept of a complaint resolution procedure to
14 be agreed upon between the Applicant and the City for
15 complaints that occur, beginning with the commencement of
16 construction, lasting through the duration of the
17 construction, and for the first 12 months of operation.
18 The second is to ask the Applicant to consult with the
19 City and to provide some form of informal dispute
20 resolution process regarding issues that would stem from
21 the Certificate and pertain to issues between the City and
22 the Applicant.

23 CHAIRMAN BURACK: Okay.

24 MR. IACOPINO: Have I captured that?

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1 And, I understand that there are dissenters.

2 CHAIRMAN BURACK: There may be
3 dissenters on that particular --

4 MR. HARRINGTON: I guess my question
5 would have been, I thought we were kind of hedging just
6 towards the second one, and not the first and the second,
7 with the same length of time on it. That the City and the
8 Applicant can come back to us with a method for, you know,
9 first dispute resolution. I don't know, am I jumping on
10 you, Commissioner Ignatius, there on your idea?

11 CMSR. IGNATIUS: I thought we -- I was
12 comfortable with the idea of both provisions that
13 Commissioner Burack laid out.

14 MR. HARRINGTON: Well, then, I suggest
15 leave it that way, and everyone will get a chance to look
16 at it when we receive the written version.

17 CHAIRMAN BURACK: Okay. Let's proceed,
18 if we may, want to go onto discuss the biomass issue here.
19 And, there are a couple of different issues that I think
20 are related. One, just to note, I think that it sounds
21 like we all agree that the stipulation as between the City
22 and the Applicant we think is appropriate. There are no
23 other changes other than the ones we've discussed or
24 additions that we would make. I would note that there is,

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1 with respect to employment issues, there is, I believe
2 it's on Page 8 of, again, this is City's Exhibit 5 -- I'm
3 sorry, it's Paragraph 8. There is a provision that reads:
4 "To the extent feasible and economically reasonable,
5 Laidlaw shall use its best efforts to prioritize the
6 purchase of wood fuel from local owners/operators, so long
7 as the fuel is procured from timber harvests that adhere
8 to Laidlaw's Sustainability and Procurement Policies."
9 So, I just want to point out that that is there in that
10 stipulation. So, that would address that issue.

11 But, then, there is the agreement
12 between Counsel for the Public and the Applicant, which is
13 Laidlaw's Exhibit 76, that we spent some time looking at
14 yesterday. And, again, this is the sustainability policy,
15 if folks are able to lay their hands on that. And, again,
16 the question is, are we comfortable with this document as
17 it exists? Do we want to adopt it as written? Or, are
18 there any changes that we would want to make or additions
19 we would want to make to this document?

20 CMSR. IGNATIUS: Mr. Chairman?

21 CHAIRMAN BURACK: Yes.

22 CMSR. IGNATIUS: I know this morning
23 that Mr. Stewart had said that "the intention was good,
24 but the terms were so undefined that it may not be as

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1 effective as could be, and maybe it needed more
2 specificity." I've been trying to think about how you'd
3 write that, and I haven't come up with any good language.

4 DIR. STEWART: Yes. The question I had
5 was, just to refresh this, Number 6, which was "LBB will
6 incorporate into its Procurement Plan a provision
7 requiring that preference be given suppliers who can
8 demonstrate", etcetera. And, you know, the idea of
9 compliance with that, and how do we measure compliance?

10 CHAIRMAN BURACK: I think we want to
11 take a look at the Fuel Supply Agreement itself. Again,
12 remember, that this sustainability condition is going to
13 be an appendix to and, in many respects, the set of
14 guiding principles, as I think we understand it, for the
15 Procurement Plan that's going to be actually implemented
16 through this Fuel Supply Agreement with the Cousineau
17 entity. And, I think we probably need to be careful about
18 not trying to reword this agreement in ways that could
19 basically interfere with the manner in which, in the
20 details of how wood gets purchased, again, just that we
21 not -- we not get too far down into the weeds here. And,
22 that's just the concern that I have. And, again, we don't
23 have, at this point anyway, the final version of the -- of
24 the agreement here with Cousineau. I don't believe we've

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1 been provided with a copy of the final agreement.

2 DIR. MUZZEY: I think we received a
3 draft --

4 CHAIRMAN BURACK: Yes, we received --

5 DIR. MUZZEY: -- on September 16th.

6 CHAIRMAN BURACK: Right. We have a
7 September 16 draft. We also know that --

8 MR. IACOPINO: Also, Exhibit -- I think
9 it's Exhibit 74 -- or 76, yes.

10 CHAIRMAN BURACK: Well, 76A, we also,
11 again, it's a confidential document, but we do know that
12 there was an amendment added to the Fuel Supply Agreement
13 to further define a term related to "preference". And, I
14 think that's probably as far as I should go here, given
15 it's a confidential document, but certainly would invite
16 you to take a look at the confidential document, which is
17 --

18 MR. HARRINGTON: 76A.

19 CHAIRMAN BURACK: -- 76A.

20 DIR. MUZZEY: We have a redacted version
21 as well. Perhaps this --

22 CHAIRMAN BURACK: Do we have a redacted
23 version of 76A? I'm not sure that we do. I think that
24 was --

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1 DIR. MUZZEY: 63? That was earlier.

2 MR. IACOPINO: I think the redacted
3 version of the Biomass Fuel Supply Agreement is
4 Exhibit 63. It was redacted for the purposes of Clean
5 Power participating in that part of the hearing. But I
6 believe that the entire document is still a nonpublic
7 document. In other words, we have --

8 DIR. MUZZEY: Right.

9 MR. IACOPINO: -- Confidential and
10 Highly Confidential Sessions that we had. So, that was
11 for the Confidential Session, and Exhibit 62 was for the
12 Highly Confidential Session. And, I was just checking
13 down here to see if we ever got a final Cousineau
14 agreement, but I don't believe that we did.

15 CHAIRMAN BURACK: Yes, I don't have a
16 recollection --

17 MR. IACOPINO: At least it was not
18 marked and entered into the record.

19 CHAIRMAN BURACK: Yes. I don't believe
20 that it is. But we will be asking for, I believe in one
21 of our other conditions that we've discussed here, we will
22 be requesting that we receive a copy of that final
23 agreement.

24 MR. HARRINGTON: Mr. Chairman, I'm going

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1 to have to request a break here shortly.

2 CHAIRMAN BURACK: You're going to
3 request a break? Why don't we do this. Why don't we take
4 about a no more than a ten minute break here, try to be
5 back here by 25 minutes of 4:00. And, while we're on
6 break, I think, if those who can help to try to track down
7 any further documents on this issue, and the other issue
8 that I think we still need to take a closer look at, in
9 terms of documents and testimony, it relates to the
10 Covenant Not To Sue and the agreement with the EPA. Okay.
11 So, let's take a short break.

12 (Whereupon a recess was taken at 3:27
13 p.m. and the deliberations resumed at
14 3:49 p.m.)

15 CHAIRMAN BURACK: We are, I believe,
16 still looking at -- we want to turn to Laidlaw 76, which
17 is the agreement between Counsel for the Public and the
18 Applicant. The question on the table was whether or not
19 it would be necessary for us to consider any further
20 definition of the term "preference" in Section 6 of this
21 Stipulation. And, I think what we learned is that there
22 is a confidential Exhibit 76A, which is an amendment to
23 the Draft Biomass Fuel Supply Agreement, which would
24 provide some further definition of this term.

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1 Have you seen that, that document, Mr.
2 Stewart?

3 DIR. STEWART: This one? Yes.

4 CHAIRMAN BURACK: Would you please take
5 a look at that number 76A, and --

6 DIR. STEWART: Right. Yeah, I read that
7 just before the break also.

8 CHAIRMAN BURACK: Okay.

9 DIR. STEWART: I mean, my concern is
10 ultimately the question of, you know, let's say a
11 hypothetical logger or set of loggers come in and make a
12 claim to EFSEC that, in the future, that these guys aren't
13 giving preference to certain suppliers who comply with,
14 you know, these provisions, for probably local suppliers.
15 I mean, you could have this compounding of issues with
16 local suppliers, who comply with the provisions, and
17 there's no reporting mechanism on what they're doing to
18 ensure that preference is given to suppliers. And, then,
19 if -- and what a reasonable test is for preference.

20 CHAIRMAN BURACK: Well, Mr. Stewart, and
21 this --

22 DIR. STEWART: I mean, if they were
23 reporting to us on what Cousineau is doing, you know, in
24 terms of the preferred sources. In other words, I'm

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1 concerned that we're not going to have knowledge in the
2 future of the fact that they're using local preferred
3 sources, if you will.

4 CHAIRMAN BURACK: Well, is one way to
5 address this, and, again, I've asked this question various
6 ways, but maybe this begins to get a little closer, is we
7 do know that under the "Reporting and Verification"
8 section of this Applicant's Exhibit 76, that they do say
9 that they are going to conduct quarterly surveys seeking
10 certain information, and then they say "no later than two
11 months following the close of the calendar year, LBB will
12 publish the results of such survey", and it covers four
13 different things.

14 Do we want to ask, on an annual basis,
15 that we be provided with a copy of that published report,
16 along with a -- just a summary description of the efforts
17 that they have made in order to ensure that they are
18 complying with the terms of the sustainability conditions,
19 including providing preference to suppliers pursuant to
20 the terms of Paragraph 6?

21 DIR. STEWART: That's exactly the note I
22 had made to myself just before the break. Is that, if,
23 under the Reporting and Verification, if there were some
24 articulation, maybe it's annually or part of these

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1 quarterly survey reports, however, an explanation of their
2 consistency with Condition 6 under "Procurement Standards
3 and Practices", I think would cover that reasonably. So
4 that there's some accountability to us for -- to ensure
5 that they're paying attention to this "preference" issue.
6 Yes. Yes.

7 CHAIRMAN BURACK: So, the way I
8 articulated it would be comfortable to you?

9 DIR. STEWART: Yes.

10 CHAIRMAN BURACK: That is, we would ask
11 them to provide us annually with a copy of the results of
12 their survey, and to include with that a description of
13 the efforts they have made to meet particularly the
14 requirements of Paragraph 6 of the sustainability
15 condition?

16 DIR. STEWART: Yes. That would work.

17 CHAIRMAN BURACK: Okay. Do you have
18 concerns about any other issues here? That is, would we
19 want them to provide us with any other information beyond
20 that, in terms of their efforts to -- the success of their
21 efforts to implement these sustainability conditions?

22 DIR. STEWART: No, I don't.

23 CHAIRMAN BURACK: Okay. Dr. Kent.

24 DR. KENT: I do.

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1 CHAIRMAN BURACK: You do? Okay. So,
2 what would -- what would meet your concerns?

3 DR. KENT: First, if they're going to
4 provide a copy of this report to SEC, I would like it also
5 sent to DRED.

6 CHAIRMAN BURACK: Okay. So, a copy of
7 the report to SEC and to DRED. And, what, other than
8 providing us with the data that they collect, what other
9 information would you want us to provide -- would we want
10 them to provide to us?

11 DR. KENT: I think there's one more
12 piece of information they need to provide. In those items
13 under Reporting and Verification", (1), they have (a)
14 through (d). I would add (e), "total volume of biomass
15 supplied to LLB" or "to Laidlaw", whatever they're calling
16 it. Without that, there's no context for any of this.

17 CHAIRMAN BURACK: Okay. And, we would
18 like them to provide that to us? Right. Not that that --
19 not that we're saying that that has to be part of the
20 sustainability condition that's what's published to the
21 world, but, at a minimum, it ought to be provided to the
22 Site Evaluation Committee and to DRED, is that correct?

23 DR. KENT: Correct.

24 CHAIRMAN BURACK: Okay. So, we would be

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1 asking them to report all of these things to us, plus the
2 total amount of biomass that they purchase.

3 DR. KENT: Or, they provide to Laidlaw.

4 CHAIRMAN BURACK: That they provide to
5 Laidlaw?

6 DR. KENT: Yes.

7 CHAIRMAN BURACK: Okay.

8 DR. KENT: My only other comment on this
9 document is just getting the reference right, make sure I
10 can get it for you, 6(h), there's an inaccurate or
11 outdated reference.

12 MR. IACOPINO: It should be "2010".

13 DR. KENT: It should say "2010", and
14 it's not quite cited right either. And, we need to
15 capture "and successive versions", since this is not a --
16 it doesn't -- it's not static; periodically, it will be
17 updated.

18 CHAIRMAN BURACK: Well, could you not
19 say that about all of these different -- these different
20 programs? That is, the "Sustainable Forestry Initiative",
21 the "Forest Stewardship Council"? Don't all of them have
22 periodic updates in terms of what their standards might
23 be?

24 DR. KENT: Yes. Those are

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1 organizations.

2 CHAIRMAN BURACK: Yes.

3 DR. KENT: And, whereas Good Forestry is
4 a document.

5 CHAIRMAN BURACK: Okay.

6 DR. KENT: That's the distinction I was
7 making.

8 CHAIRMAN BURACK: Okay.

9 MR. IACOPINO: So, what we would want is
10 some language that, well, first, correcting the reference,
11 and then saying "and as may be amended from time to time."

12 DR. KENT: Yes. My read was, because
13 they're just referencing the organizational websites,
14 they're going to be stuck with what's ever on that website
15 as it's updated.

16 CHAIRMAN BURACK: All right. Are there
17 any other modifications that we would make to these
18 sustainability conditions or to, again, the additional
19 reporting that we would ask to have made to the Committee
20 and to DRED with respect to the sustainability conditions?
21 Mr. Stewart, you have something else?

22 DIR. STEWART: Sorry. In Berlin, Berlin
23 5, on Page 8, there's another one of these squishy, "to
24 the extent" -- it's Number 8 on Page 8, "To the extent

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1 feasible and economically reasonable, Laidlaw shall use
2 its best efforts to prioritize the purchase of wood from
3 local owner/operators, so long as the fuel is procured
4 from timber harvests that adhere to Laidlaw's
5 Sustainability and Procurement Policies." It's kind of
6 the same issue as to what "best efforts" are. And, I
7 think there's a need to report on what those efforts are
8 to some reasonable degree, so that we have knowledge that
9 that condition is being complied with. And, again, I'm
10 not sure what the parameter is, you know, for a pass/fail,
11 but I think reporting is a first good step. Well, what's
12 "local" is a question, too, actually, but --

13 CHAIRMAN BURACK: Well, and I think that
14 that was left -- it sounded to me like that was left
15 intentionally somewhat -- somewhat broadly recognized or
16 broadly defined by the City and by Cousineau and by
17 Laidlaw, because Laidlaw would clearly would not -- or
18 "local" would clearly not just mean "within the City of
19 Berlin".

20 DIR. STEWART: Right.

21 CHAIRMAN BURACK: It may not just mean
22 "Coos County", given its, you know, Berlin's proximity to
23 the Maine border, and, for that matter, to the Vermont
24 border. So, you know, I don't know if we can define

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1 "local" for them any better than they can.

2 DIR. STEWART: Right. And, I agree.

3 MR. HARRINGTON: Mr. Chairman?

4 CHAIRMAN BURACK: Yes, Mr. Harrington.

5 DIR. STEWART: It's not Massachusetts
6 back hauling, I know that.

7 MR. HARRINGTON: I would tend to go
8 along with what you just said. I think we -- we're
9 dealing with an agreement that was reached between two
10 parties. And, for us to then take that and say "well,
11 we're going to draw five or ten more requirements out of
12 this", first of all, I don't know what statutory authority
13 we're working on here. This is an agreement, a voluntary
14 agreement, which they -- both parties have said "put it
15 into the -- as a condition." So, we can say "fine",
16 because they agreed to it. But, going much beyond that, I
17 don't know where we get the authority to do that from.
18 So, I would be cautious as to putting too much extra in
19 there.

20 DIR. STEWART: I mean, my concern is
21 reporting on compliance with the condition, I mean, if we
22 leave the condition in --

23 MR. HARRINGTON: Every time there's a
24 report, there's a cost to somebody and an effort that has

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1 to be done, and then they can be questioned on that, and
2 there can be a follow-up. And, I'm just saying it places
3 a burden on somebody. And, I'm not sure where we get the
4 statutory authority to do that on where you buy wood from,
5 only insofar as the parties have already agreed to these
6 conditions voluntarily. Beyond that, I don't see that we
7 have authority to regulate where somebody gets wood from.

8 CHAIRMAN BURACK: And, if I'm
9 understanding things correctly, it's not that Mr. Stewart
10 is suggesting that we want to try to suggest that we're
11 going to regulate where they get the wood from. It's he's
12 suggesting that it would be valuable to the Committee to
13 have additional information, so that we can have some
14 assurance that, in fact, efforts are being made to comply
15 with this condition that the parties have agreed to, and
16 that they have effectively asked us to incorporate into
17 the Certificate.

18 MR. HARRINGTON: I guess I'd say --

19 CHAIRMAN BURACK: And, so, let me, if I
20 may, let me just read for all of you, just so you all
21 understand this, we all understand this. Under RSA
22 162-H:16, VI, reads as follows: "A certificate of site
23 and facility may contain such reasonable terms and
24 conditions as the Committee deems necessary and may

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1 provide for such reasonable monitoring procedures as may
2 be necessary. Such certificates, when issued, shall be
3 final and subject only to judicial review." By the way,
4 VII also reads: "The Committee may condition the
5 certificate upon the results of required federal and state
6 agency studies whose study period exceeds the application
7 period." That latter is not relevant here to this issue.

8 But, with respect to VI, I think it's
9 very clear that we do have the authority to impose
10 reasonable monitoring procedures.

11 MR. HARRINGTON: But, I guess, what I
12 would say is that this was an agreement between the City
13 of Berlin and Laidlaw. And, if Berlin's happy with the
14 words, and feel like that's adequate, I'm not quite sure
15 what we're trying to accomplish by going beyond that. I
16 guess --

17 DIR. STEWART: Well, my point is that
18 we've got a certificate here. And, if some organization
19 or group of loggers come in from Coos County and say
20 "well, you've got this certificate, you've got a
21 condition, and the Applicant, now the certificate holder
22 is not in compliance, what are you going to do about it?"
23 And, so, if the condition doesn't mean anything, it
24 shouldn't be in the certificate. And, if it does, then I

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1 think we should have some reporting so that we have an
2 articulation of an effort to comply. That's all I'm
3 asking for. I think we should have a reasonable report on
4 an annual basis or something on that sort.

5 MR. HARRINGTON: Okay. I thought you
6 were trying to change the wording that was actually in the
7 --

8 DIR. STEWART: No. I'm looking for
9 "Reporting and Verification".

10 MR. HARRINGTON: So, some way to
11 evaluate whether, not knowing what "local" means, but you
12 would at least have some facts to make some reasonable
13 judgment as to, if all the wood was coming from upper
14 state New York, we can conclude that that wasn't local.

15 DIR. STEWART: Yes. If there's
16 700,000 tons of back haul, that's not local to me.

17 MR. HARRINGTON: Okay.

18 DIR. STEWART: And, it may be to
19 Cousineau, but it's not to me.

20 MR. HARRINGTON: I understand what
21 you're getting at now.

22 CHAIRMAN BURACK: Dr. Kent.

23 DR. KENT: I think we're confounding a
24 couple things here. I believe the intent of this is to

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1 provide local people with work, benefiting financially
2 from Laidlaw. There's no guarantee that a local operator
3 is taking wood locally. They could be taking wood from a
4 lot of places. If the job is good enough, they will
5 travel and go stay there if it's a big job.

6 So, it wasn't worded that way, and I
7 imagine that somebody thought about that. The intent is
8 not necessarily to have local wood, but to provide input
9 to the local economy.

10 MR. IACOPINO: So, it's a wood provider.

11 CHAIRMAN BURACK: Mr. Janelle.

12 MR. JANELLE: In the sustainability
13 conditions, I don't know if Number 9, Mr. Stewart, meets
14 some of that requirement. It does stipulate that for two
15 years they will identify the quantity, the date of
16 delivery, and also the town of production, I assume that's
17 where the wood came from.

18 DIR. STEWART: Yes. It doesn't say
19 there's going to be a report pulled together that
20 explains, you know, the big picture on, say, an annual
21 basis, which I think is what I'm looking for.

22 DIR. MUZZEY: But, given Number 9, we
23 know that they have already expended the effort to gather
24 that information. So, perhaps, giving that information in

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1 summary form to the SEC would not take a great deal of
2 expense.

3 DIR. STEWART: I think it would be a
4 straightforward --

5 DIR. MUZZEY: Right.

6 DIR. STEWART: -- thing for Laidlaw to
7 pull together, so that we've got a record of how
8 compliance with the certificate or, in this case, it's
9 really a good faith effort to procure wood from certain
10 areas and certain source of wood in the sense of the
11 sustainability. So, it's just a matter of reporting, I
12 think, so that we have it and we have a record going
13 forward of compliance with the certificate.

14 CHAIRMAN BURACK: Okay. So, what I
15 think -- what I think we're hearing here is that we're
16 looking at a condition that would require the Applicant,
17 on an annual basis, unless we want to discuss some other
18 periodicity here, but, on an annual basis, to provide us
19 with the results of the survey that they perform under the
20 "Reporting and Verification" section of this, along with a
21 data summary or a narrative explanation of the efforts
22 that they are taking to comply with Section 6 of the
23 procurement standards and practices, as well as a summary
24 of the data collected in -- under Section 9 of the

1 Agreement. And, then, the question is, whether we are
2 also asking them to provide us with a summary of their
3 efforts to satisfy Paragraph 8, on Page 8, under the
4 section entitled "Community Benefits" of the Stipulation
5 with the City of Berlin, which is Berlin Exhibit 5. Are
6 we asking for all of those elements to be included?

7 DIR. STEWART: That would be my
8 preference.

9 CHAIRMAN BURACK: Any other thoughts or
10 comments on this? Okay. We'll get that --

11 MR. IACOPINO: I think you missed one.

12 CHAIRMAN BURACK: What did we miss?

13 MR. IACOPINO: And, that was also, in
14 addition to the data required in the sustainability
15 agreement, the total biomass provided.

16 CHAIRMAN BURACK: Oh, that's right. The
17 total biomass that's been provided to the facility on an
18 annual basis. Okay. I think the --

19 DIR. MUZZEY: Commissioner?

20 CHAIRMAN BURACK: Yes. Director Muzzey.

21 DIR. MUZZEY: I had one, one question,
22 before we move away from this. Under "Reporting and
23 Verification", and maybe this is just a reflection of
24 understanding meaning. "LBB will conduct quarterly

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1 surveys seeking the following information:" The use of
2 that word "seeking the following information", is that
3 clear to everyone else on the Committee what that means?
4 For me, that places doubt in my mind that they're actually
5 going to get the information, but they're just seeking it.
6 And, I'm not sure if anyone else shared my concern there.

7 MR. HARRINGTON: Which document again?

8 Is this the --

9 CHAIRMAN BURACK: Again, we're in
10 Laidlaw Exhibit 76. I believe that what we heard from Mr.
11 Richmond is that, with their existing suppliers, they
12 regularly survey them to determine various -- various
13 pieces of information, and that this would be a practice
14 that they would institute routinely, to ask this specific
15 set of questions or set of questions that would enable
16 them to gather these specific pieces of information. So,
17 from my standpoint, it's pretty clear. I mean, I don't --
18 I'm not sure that we could or should attempt to require
19 that every single party that they have done business with
20 has to have answered the survey. I think what they're
21 saying is they're going to survey them, see how much
22 information they can get, and whatever information they
23 gather they will provide.

24 Does that make sense to folks?

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1 (No verbal response)

2 CHAIRMAN BURACK: Okay. I think we've
3 now covered those issues pretty well. Is there anything
4 that we need to have with respect to conditions pertaining
5 to ISO or interconnection with the Coos Loop?

6 CMSR. IGNATIUS: Mr. Chairman, I had one
7 other wood issue.

8 CHAIRMAN BURACK: Yes.

9 CMSR. IGNATIUS: That may have been
10 resolved. But, if not, we had opened -- left open the
11 question of whether there were any best management
12 practices regarding the Asian Longhorn Beetle or other
13 insects that we might want to include as a condition.
14 And, Dr. Kent was going to think about that, whether there
15 was language that would work or not, and then I think we
16 didn't get back to it.

17 CHAIRMAN BURACK: Thank you for
18 reminding us, Commissioner.

19 DR. KENT: I have it in my notes. But,
20 no. And, the reason is that the movement of wood,
21 respective of insects, is handled by a federal agency,
22 APHIS, Agriculture Planned Health Inspection Service.
23 And, we think it's best to leave it there with them,
24 rather than usurp their authority and try to duplicate.

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1 CHAIRMAN BURACK: Very good.

2 CMSR. IGNATIUS: May I ask you a
3 question?

4 CHAIRMAN BURACK: Yes.

5 CMSR. IGNATIUS: I know Mr. Richmond had
6 said he inspects the wood as it comes in on a sort of spot
7 basis, and was in tune to that issue. So, that's good.
8 If -- would he be held to standards that you just
9 described, these federal standards?

10 DR. KENT: Yes. But the way APHIS tries
11 to work is to identify areas that are off-limits to
12 logging, so they prevent the movement, the initial
13 movement. They know better than to ask people to inspect
14 wood in any quantity that comes into a yard. It's just
15 not possible. So, APHIS tries to prevent the movement to
16 start with.

17 CMSR. IGNATIUS: So, Mr. Richmond could,
18 in order to try to protect his supply, he could ask the
19 people who bring wood to him not to go to those identified
20 areas that are off-limits?

21 DR. KENT: They would be off-limits.
22 They shouldn't be taking wood from there. So, --

23 CMSR. IGNATIUS: Thank you.

24 DR. KENT: And, if there's in-state

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1 pests, they should know the protocol for dealing with it
2 anyways.

3 CMSR. IGNATIUS: Thank you.

4 DR. KENT: Thanks.

5 CHAIRMAN BURACK: All right. Can we
6 move onto ISO?

7 MR. IACOPINO: This is my note. Whether
8 we want to put a condition of the final approval
9 compliance with the interconnection agreement, --

10 (Court reporter interruption.)

11 MR. IACOPINO: I'm sorry. Whether we
12 want to put in a condition that they will comply with all
13 of the ISO interconnection requirements as a condition of
14 the Certificate? We've done that in the past.

15 MR. HARRINGTON: Yes, that's a pretty
16 standard thing I think we've put in. But, in this case,
17 we've got kind of an interesting twist I think we ought to
18 at least discuss. And, that's because, if you look at the
19 ISO interconnection, it talks about a gross output of the
20 generator, I think it's 65.7 megawatts or something like
21 that, and this came up in discussion. And, actually,
22 their interconnection agreement I think is for 58.7 or
23 something to that effect of net output onto the grid.
24 And, that's all they're going to be allowed to put on the

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1 grid by ISO until such time as they come up with an
2 interconnection agreement that allows them to do higher
3 than that.

4 Now, the question is, as described in
5 the filings here, basically everywhere the plant is
6 described as "nominally 70 megawatts". And, the Applicant
7 has said "well, for whatever reason", and maybe they
8 changed design, it sounds like, somewhere along the line,
9 and they went from the 60, whatever it was, 65 something
10 megawatts up to 70 megawatts. The ISO will take care of
11 the regulation on that themselves, as far as
12 interconnection goes. They simply will not allow them to
13 interconnect for the additional, whatever we have here,
14 four and a half megawatts or so, until such time as they
15 go through the whole process over again, do all the
16 studies, and they got to get in the queue and work their
17 way up and so forth.

18 But, on the other hand, I don't see that
19 there's much of any value of us limiting the ability of
20 Laidlaw to go forward with the higher megawatt output,
21 assuming they get the future approval for the ISO. Again,
22 without that approval, it cannot physically happen. I
23 would not like to see this -- I would like to see this
24 come out such that they don't have to come back here, and

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1 say, "okay, you approved me for 58.7, whatever, megawatts
2 of output, and now it's going to be 64.2." So, they have
3 to somehow refile with us. And, I just want to make that
4 clear. That there's not going to be any change to
5 anything we've looked at as far as that goes. So, I would
6 like to see maybe help from Mr. Iacopino how we word it,
7 so that they can, if we put this in, they comply with the
8 ISO certificate for, and I can get the exact number off of
9 the interconnection agreement. And, if it was to be
10 revised by ISO, up to but not to exceed, say, 70
11 megawatts, then the further Committee approval wouldn't be
12 required.

13 MR. IACOPINO: Is it your understanding
14 that the gross output is 70 megawatts no matter what? In
15 other words, that's the total capacity?

16 MR. HARRINGTON: No, let me read it
17 right off of the form. I don't think there's anything
18 confidential about this part of it. "Gross unit rating is
19 65.9 megawatts. Net unit rating is 58.7." The difference
20 being the service, a hotel load that's required to operate
21 the plant. They have stated that, which was 7.2
22 megawatts, they have stated that they're going to be going
23 closer to a 70 megawatt gross rating, which would put
24 somewhere in the vicinity of about four more megawatts, or

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1 62, 63 megawatts out onto the grid.

2 Now, before they're allowed to do that,
3 they're going to have to get an additional interconnection
4 agreement through the whole process with the ISO.
5 Starting out by putting it on the queue and doing the
6 various -- there's three or four different stages to that
7 interconnection agreement. But I wouldn't -- I would want
8 to make sure they're here, since we've been using the
9 figure of "nominally 70 megawatts", that there's no
10 requirement for them to come back through and go through
11 this whole process all over again, when we're going to say
12 "well, what did you do?" "We're putting out four
13 megawatts than we were before." "Oh." So, just to see
14 there's some way of making that clear to waste everybody's
15 -- not waste everybody's time on that.

16 CHAIRMAN BURACK: What's the reference
17 to what exhibit are you in that has these numbers in it?

18 MR. HARRINGTON: It's referenced 43,
19 it's a confidential reference, because its Critical Energy
20 Infrastructure information, but that type of information
21 that I just gave is not.

22 CHAIRMAN BURACK: Okay. So, what your
23 suggestion then is that we would include a condition that
24 is consistent with conditions of the same type that we've

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1 provided in the past, that indicates that they must obtain
2 final approval from ISO and comply with all ISO
3 requirements for a provision of up to whatever the maximum
4 amount is that they have indicated that they could
5 generate here, which is 70 megawatts?

6 MR. HARRINGTON: 70 megawatts. And, in
7 fact, if you look in the other parts of the filing, they
8 refer to this as a "biomass plant of a nominal rating of
9 70 megawatts." It's just, for whatever reason, in the
10 actual information they submitted to the ISO, which, in
11 their defense, probably could have been a few years ago.
12 Because, over the last three or four years, there has been
13 a long period of time between submittal and getting
14 results from the ISO. And, they have had some design
15 change that allows them to max, get out a little bit more
16 power.

17 So, all I'm saying is, we have a
18 provision in there that says that comply with the
19 provisions of the interconnection agreement and any future
20 revised interconnection agreement up to, and, if we want
21 to set it, because I think that we can't say, if they were
22 going to go back and do 100 megawatts, for example, but
23 any revised interconnection agreement that allows a --
24 provides for a gross output of 70 -- up to 70 megawatts.

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1 MR. IACOPINO: Mr. Harrington, the --

2 MR. HARRINGTON: Or a gross unit rating
3 of up to 70 megawatts.

4 MR. IACOPINO: Yes. And, what they have
5 applied for, in their Application, at Page 38, is a
6 turbine generator that is expected to be approximately
7 70 megawatts, but is expected that the net electrical
8 output of the facility, after allowance for all internal
9 parasitic loads, will be approximately 64 megawatts.

10 MR. HARRINGTON: Right.

11 MR. IACOPINO: Is that --

12 MR. HARRINGTON: That's -- this is what
13 I wanted to get straight. That's what they're applying
14 for here. But the interconnection agreement, as approved
15 by the ISO, does not allow that. It allows less.

16 MR. IACOPINO: It's less.

17 MR. HARRINGTON: It's less. So, all my
18 point is, and maybe I'm not making much sense here, all my
19 point is --

20 CHAIRMAN BURACK: No, I think we -- I
21 think we understand you.

22 MR. HARRINGTON: Okay.

23 MR. IACOPINO: So, if we approve --

24 MR. HARRINGTON: Exactly.

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1 MR. IACOPINO: -- that Application, that
2 has a maximum, that satisfies your concern?

3 MR. HARRINGTON: Yes. Yes.

4 MR. IACOPINO: Okay.

5 MR. HARRINGTON: I just didn't want to
6 trip ourselves up with the ISO thing here that's in the
7 Application.

8 MR. IACOPINO: Can I ask Mr. Harrington
9 one other question, just so I understand what his concern
10 is? So, if we approve what's in Paragraph (f)(2), Page 38
11 of the Application, has the maximum, that will take care
12 of that particular issue. But the question to you is,
13 with respect to conditions about compliance with ISO, then
14 the standard condition, as far as you're concerned, that
15 we've used in other dockets would be fine under those
16 circumstances, as long as everybody understands we're
17 approving what's in this, in the application, is that
18 right?

19 MR. HARRINGTON: Right. But I guess my
20 point is that, I think there has been another one where
21 we've come back with a second interconnection agreement
22 and to up-rate the facility. And, what we're saying is,
23 we don't want to have to make them do that.

24 MR. IACOPINO: Quite frankly, I think

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1 we've usually gone by whatever nameplate capacity they
2 have told us in their application and in the past as well,
3 even though the net output probably is not --

4 MR. HARRINGTON: Well, I guess, maybe
5 I'm trying to avoid a "sizable change" discussion in the
6 future.

7 MR. IACOPINO: I understand.

8 CHAIRMAN BURACK: Commissioner Ignatius,
9 you have a question?

10 CMSR. IGNATIUS: I think, just to close
11 this up, I would recommend that it be worded that "the
12 approval is for 70 megawatts nameplate capacity
13 conditioned upon receipt of confirmation from the ISO of
14 that additional capacity."

15 MR. HARRINGTON: Yes, they can't go
16 there until the ISO lets them. But I just don't want to
17 make it "But they had to come back here as well."

18 CHAIRMAN BURACK: Okay. Thank you. All
19 right. Again, I'm just working -- working my way through
20 a list here of issues.

21 I believe we had some discussion,
22 Director Muzzey, as to whether there were one or two
23 conditions that would be appropriate in connection with
24 the final DHR letter?

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1 DIR. MUZZEY: Yes.

2 CHAIRMAN BURACK: What would those be?

3 DIR. MUZZEY: I would suggest a
4 condition that states that, "if there are any changes in
5 the construction plans and specifications as submitted to
6 the DHR, that the proposed -- that the Applicant submit
7 those changes or word modifications to the DHR for review
8 and comment."

9 And, also, whether you would want to
10 group this in the same condition or a separate one: "If
11 unanticipated archeological resources are disturbed during
12 construction, that the Applicant complete any
13 investigations needed under the guidance of the DHR and
14 published New Hampshire state standards." Something along
15 those lines.

16 MR. IACOPINO: I thought you had two
17 conditions that came out of the final letter from DHR, and
18 then the archeological condition, or am I off on that?

19 DIR. MUZZEY: Well, no, you're right.
20 The other -- the other would be is if a member of the
21 community brought a new concern regarding historical or
22 archeological resources that had not been reviewed.

23 CHAIRMAN BURACK: Then, you would want
24 that to be brought to the attention of the Division of

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1 Historic Resources?

2 DIR. MUZZEY: Yes. Right.

3 CHAIRMAN BURACK: For consultation, is
4 that what it is?

5 DIR. MUZZEY: Yes, it would be. A
6 generic example of that type of thing would be, during
7 construction, if vibration suddenly caused a problem for a
8 historical property, that type of new information. That
9 doesn't need to be referenced in the condition, but that's
10 just an example.

11 MR. IACOPINO: Right. And, that's for
12 consultation of DHR?

13 DIR. MUZZEY: Yes.

14 CHAIRMAN BURACK: Okay. Are there any
15 other thoughts or comments on this set of issues,
16 historical or archeological issues?

17 (No verbal response)

18 CHAIRMAN BURACK: Okay. Yes. There's,
19 when we heard testimony on the fly ash issue, I think
20 there was some testimony, you may recall this, Mr. Wright,
21 that they -- I think there was an agreement that they
22 "would not store more than one week's worth of fly ash
23 on-site at one time"?

24 MR. WRIGHT: That's correct. They would

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1 store the fly ash in the ash silo, and that they would not
2 store more than one week's worth on-site. That is
3 correct. And, they also made a commitment, I believe, as
4 far as bottom ash goes, that they would store that in
5 containers on-site.

6 CHAIRMAN BURACK: Okay. What --

7 MR. IACOPINO: When you say "on-site"
8 and "silo", are you considering those as different issues?

9 MR. WRIGHT: No. No.

10 MR. IACOPINO: Okay.

11 CHAIRMAN BURACK: All right.

12 MR. IACOPINO: So, this silo can only
13 have one week of storage in it?

14 MR. WRIGHT: I guess it could have more,
15 but I think what they agreed to is they "would store no
16 more than one week's worth of fly ash." That was the
17 testimony I heard.

18 CHAIRMAN BURACK: Okay.

19 MR. JANELLE: Commissioner?

20 CHAIRMAN BURACK: Yes, Mr. Janelle.

21 MR. JANELLE: Just ash disposal is also
22 referenced in the Berlin City document as well, on 5.

23 MR. WRIGHT: That's right.

24 MR. JANELLE: Says "No waste ash shall

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1 be piled or stored outdoors at the facility. All waste
2 ash shall be disposed of at permitted landfill sites or
3 used as or integrated into permitted composting or
4 recycling materials for re-use/re-sale."

5 CHAIRMAN BURACK: Thank you. So, there
6 is already some provision for this. So, can we find in
7 the record where there was discussion of the ash issue, to
8 see precisely what was agreed to? I think it was -- I
9 think it was Mr. Kusche, may have been Mr. Bravakis.

10 MR. WRIGHT: Yes, I think -- it was
11 either on the afternoon session of the 23rd maybe.

12 CHAIRMAN BURACK: Okay.

13 CMSR. IGNATIUS: Mr. Chairman, my notes
14 look like it --

15 MR. WRIGHT: It might have been
16 Mr. Frecker as well. Could have been Mr. Frecker who
17 stated that.

18 CMSR. IGNATIUS: Mr. Chairman, my notes
19 look like it was cross-examination by Public Counsel of
20 Mr. Strickler.

21 CHAIRMAN BURACK: And, do you know the
22 date?

23 CMSR. IGNATIUS: Oh. The first day.

24 CHAIRMAN BURACK: First day.

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1 CMSR. IGNATIUS: Page 9 of my notes, if
2 you want that citation. I wrote down that it would be
3 "approximately one week". So, it may not have been a
4 hard-and-fast seven days.

5 MR. IACOPINO: I have it. It's Page 55
6 of August 23, 2010.

7 MR. HARRINGTON: Morning or afternoon?

8 CMSR. IGNATIUS: Afternoon.

9 MR. IACOPINO: It is a afternoon.

10 MR. HARRINGTON: Page 53?

11 MR. IACOPINO: Page 55. Line 16,
12 Mr. Frecker says: "I believe that the ash storage system,
13 at least at the time the application materials were filed,
14 hadn't been fully -- it's designed and not been fully
15 finalized. But I believe the number talked about was a
16 week's worth of ash generation."

17 CHAIRMAN BURACK: He says it was "about
18 a week's worth of ash generation."

19 MR. IACOPINO: "And that will all be
20 inside a structure, a building somewhere? Answer: That
21 is correct." And, then it goes onto the next page, "It
22 will be contained within a silo". Yeah, he says "there
23 will be a week's worth in there at a time." So, he is --

24 CHAIRMAN BURACK: Mr. Wright.

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1 MR. WRIGHT: At least, if it's stored
2 inside the silo, when the silo gets filled, they would
3 have to empty it out, obviously. So, --

4 CHAIRMAN BURACK: Yes. So, I guess what
5 I'm wondering is whether that needs to be a condition, if
6 it's all going to be stored in a silo. And, if we have
7 this other provision relating to ash disposal in the City
8 Stipulation, do we need something more on ash beyond
9 what's already here?

10 MR. IACOPINO: They did agree to it.

11 CHAIRMAN BURACK: They did agree to it,
12 apparently. Although, we haven't found yet exactly where
13 they --

14 MR. HARRINGTON: Well, just keep reading
15 down. It says "Would you agree to a condition that no
16 ashes could be stored outside and that no more than a
17 week's worth would be kept in the silo? [A.] I believe we
18 can do that. [Q.] That's all I have on the subject." So,
19 it sounds like they did.

20 CHAIRMAN BURACK: All right. And, what
21 page was that on?

22 MR. HARRINGTON: That's on Page 57, Line
23 6, the same day, the afternoon.

24 CHAIRMAN BURACK: Thank you.

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1 MR. IACOPINO: That's Mr. Bravakis.

2 CHAIRMAN BURACK: Okay. And, that was
3 under cross-examination by Mr. Roth, is that correct?

4 MR. IACOPINO: By Mr. Brooks, that's
5 correct.

6 CHAIRMAN BURACK: By Mr. Brooks also?
7 Okay. Counsel for the Public, in any event. Okay. So,
8 again, I guess the question is, is do we need to make that
9 a condition?

10 MR. HARRINGTON: Just as a question.
11 It's something that they agreed to in public testimony.
12 But, unless we make it a condition, it's not a condition,
13 correct?

14 MR. IACOPINO: Well, I think one of the
15 issues that you, as a Committee, ought to be concerned
16 about is that I don't believe that the silo is actually
17 contained within the Application, because it had not yet
18 been designed. So, what you may, by putting this
19 condition in, require -- you might want to require that
20 the ash be contained in a silo, and that -- and, if you
21 want to put a quantity on it, that it -- you put that
22 quantity on it. But that's up to you. That's a value
23 judgment that you all have to make.

24 MR. HARRINGTON: Didn't we get a picture

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1 of the silo?

2 MR. WRIGHT: We did get a picture of the
3 silo.

4 MR. IACOPINO: Yes, but I don't believe
5 it was in the original application.

6 CHAIRMAN BURACK: No, but there was a
7 subsequent exhibit that had a picture of the silo in it.

8 MR. HARRINGTON: It was huge, correct?
9 Well, I tend to go along with Mr. Wright. As long as they
10 agree they're going to put it all in the silo, if the silo
11 is half full or three quarters full, I don't really care
12 if it's an eight day supply or a six day supply. When
13 it's full, they're going to have to dump it.

14 MR. WRIGHT: Correct.

15 MR. HARRINGTON: So, as long as --

16 MR. WRIGHT: The important thing is to
17 contain the fly ash so it doesn't become fugitive dust.
18 So, I agree with Mr. Harrington.

19 CHAIRMAN BURACK: Okay. So, what we
20 were hearing outlined by Attorney Iacopino, in terms of a
21 condition, would be a condition that a silo be constructed
22 to contain all fly ash is really -- and operated for that
23 purpose, correct? I mean, that's --

24 MR. WRIGHT: That would be sufficient

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1 for my purposes.

2 MR. IACOPINO: And, I'll say it
3 "consistent with Exhibit", and I'll find the exhibit
4 number, from the simulation they provided.

5 CHAIRMAN BURACK: Okay. And, in terms
6 of the bottom ash being kept in containers, we could add
7 that as an additional condition, that the bottom ash be
8 stored in containers.

9 MR. WRIGHT: That would work for me.

10 CHAIRMAN BURACK: Okay. All right. So,
11 I think we've addressed -- and there's nothing more we
12 need to do with respect to dust or fugitive dust as a
13 condition?

14 MR. WRIGHT: No, I believe, between the
15 Air Permit and Berlin 5, we're good on dust.

16 CHAIRMAN BURACK: Okay. Continuing just
17 to work back through this list here. The next issue that
18 I have is with respect to the Covenant Not To Sue and the
19 EPA Agreement, and other agreements as well. And, I
20 believe, Director Muzzey, you found a very broad statement
21 referring to multiple issues.

22 DIR. MUZZEY: Yes. In the testimony?

23 CHAIRMAN BURACK: In the testimony, yes.

24 DIR. MUZZEY: On August 26, in the

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1 morning.

2 CHAIRMAN BURACK: August 26, a.m.?

3 DIR. MUZZEY: A.m. Beginning at the
4 bottom of Page 46, there's cross-examination by Mr.
5 Brooks. And, it covers a number of these issues.

6 MR. HARRINGTON: Excuse me, what was the
7 page number?

8 CHAIRMAN BURACK: I'm sorry, Page --

9 MR. IACOPINO: Forty-six.

10 DIR. MUZZEY: At the bottom of Page 46.

11 MR. IACOPINO: Line 21.

12 DIR. MUZZEY: And, it continues through
13 Page 50.

14 (Short pause.)

15 DIR. MUZZEY: Actually, it continues
16 even further, if you want to consider Fibrowatt's
17 responsibilities as well, that goes into Page -- about
18 Page 52.

19 CHAIRMAN BURACK: My understanding from
20 counsel is that we did not receive a stipulation from
21 parties, Counsel for the Public and the Applicant on this.
22 So, short of that, I think we just have to do the best we
23 can to come up with something that we think makes sense.

24 Okay. So, I think we need to look at

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1 this issue sort of in several slices. One particularly as
2 it pertains to the environmental -- the environmental
3 agreements, that is the Covenant Not To Sue and the EPA
4 Agreement. And, then, I think we need to look at the same
5 issue with respect to the overall transaction, and whether
6 we're looking for -- whether we're looking for guarantees
7 or some other form of commitment with respect to
8 performance under the various provisions.

9 MR. HARRINGTON: Mr. Chairman?

10 CHAIRMAN BURACK: Yes.

11 MR. HARRINGTON: Could I ask a question
12 of Mr. Iacopino? It sounds here as if you're saying that
13 they were looking to come up with some stipulation that
14 hasn't been done. Was that just an oversight they hadn't
15 gotten around to, to the best of your knowledge, or do
16 they try and fail? Or, you just don't know one way or the
17 other?

18 MR. IACOPINO: I don't know.

19 MR. HARRINGTON: Okay.

20 CHAIRMAN BURACK: Let me turn first to
21 the Covenant Not To Sue and the EPA agreement. We did
22 have, on August 24, 2010, in the morning session, and this
23 appears at Pages 91 and 92, --

24 MR. HARRINGTON: I'm sorry, what was the

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1 date again?

2 CHAIRMAN BURACK: August 24, 2010, the
3 morning session. And, again, just to point this out,
4 bottom of Page 90, onto Page 91, this is the basis on
5 which I made the statement earlier today that I did not
6 believe the Dummer Yard Leachate issue, which is Public
7 Counsel Exhibit 3, that it was applicable to Laidlaw, to
8 this Applicant, for this Project. And, Attorney Needleman
9 says that he -- that's his understanding. So, that takes
10 that, that agreement, out of the equation, out of the
11 picture.

12 We then went onto inquire about Public
13 Counsel Exhibit 2, as well as the T1 matter. And, Mr.
14 Needleman says, on Page 92, says "I think I can probably
15 answer your earlier question and this one together, after
16 having an opportunity to consult about this. PJPD is the
17 owner of the property, as I understand it at the moment,
18 is the entity that would bear responsibility for the T1
19 matter." He goes onto say "what I need to determine
20 further at the break is whether or not those
21 responsibilities were assigned under the lease to LBB.
22 And, we will ascertain that and let you know." I'm not
23 sure that we actually received a response to that
24 question.

[DELIBERATIONS]

1 There may be some further discussion on
2 the record with Mr. Needleman later about this, so we will
3 need to search further for the T1 matter.

4 Then, Mr. Needleman went on to say,
5 "With respect to the Covenant Not To Sue, my understanding
6 is that that document runs to the benefit of the next
7 property owner, which would be PJPD. And, I would also
8 note that it may be an issue that Public Counsel wants to
9 take up later, but Public Counsel Exhibit 4, which was
10 reserved, also relates to that matter."

11 So, PJPD, initially anyway, I think, the
12 Applicant had acknowledged is the initial responsible
13 party under both of those documents. And, I would suggest
14 that, unless somebody has a better idea, that we include a
15 condition that the other parties here, that is Laidlaw
16 Berlin BioPower, and NewCo and their respective successors
17 or assigns, that they separately agree to guarantee PJPD's
18 performance under those two documents.

19 MR. HARRINGTON: Yes, I think that's
20 important, because there's kind of a floating management
21 structure here. And, the question that was raised by
22 Public Counsel is, and I'll quote, "We don't want to be in
23 a position of trying to track down, you know, and go to
24 one entity, and they say, "well, actually, it's not us,

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1 because our structure is X, and so go to this one", and go
2 back and forth." So, I think this would eliminate that
3 issue.

4 CHAIRMAN BURACK: Okay. Thank you. I
5 guess, there's, as I think about it now, there is a
6 broader question here as to whether or not we would want
7 to have a similar condition with respect to any and all of
8 the environmental permits. And, I'm recalling now, and I
9 believe, Director Muzzey, you may have found reference to
10 this somewhere, there was also some discussion of a
11 Groundwater Management Permit for the site as well. Do
12 you recall such a thing? In fact, it's right there on
13 Page 50, on August 26th.

14 DIR. MUZZEY: Yes, that continues. And,
15 that was not resolved, as I remember.

16 CHAIRMAN BURACK: Well, and as I read
17 this further, it's not clear to me that there actually is
18 a Groundwater Management Permit issued to date, it's just
19 anticipation, if there were to be one, who would be the
20 Applicant. And, at that time, looks like Mr. Needleman
21 said he would "prefer to talk about that separately" with
22 Mr. Roth. So, it looks like they hadn't contemplated
23 that. But, again, I don't believe there actually is a
24 Groundwater Management Permit issued at this time.

[DELIBERATIONS]

1 Mr. Stewart, you're not aware of such a
2 thing?

3 (Director Stewart shaking head in the
4 negative.)

5 CHAIRMAN BURACK: I don't recall any
6 testimony or exhibits suggesting there was such a thing.
7 So, this was more in contemplation of a future permit
8 potentially. But, with respect to the other permits that
9 had been issued or would be issued, that is the Air
10 Permit, Alteration of Terrain Permit, Shoreland Permit,
11 the Wastewater Sewer Permit, and the Industrial Wastewater
12 Sewer Permit, and I guess those are probably both the
13 same, as well as the Industrial Wastewater Indirect
14 Discharge Permit, would it be appropriate or necessary for
15 us to include as a condition that the other parties, and
16 their successors and assigns, would guarantee performance
17 under the terms of those permits?

18 MR. HARRINGTON: Can I ask a question
19 before we come with this, --

20 CHAIRMAN BURACK: Yes.

21 MR. HARRINGTON: -- it may be relevant
22 to how they answer. Maybe any one of you two over there
23 would probably know, who are the permits actually issued
24 to now? Are they to Laidlaw?

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1 MR. WRIGHT: The Air Permit was issued
2 to Laidlaw Berlin BioPower, LLC.

3 DIR. STEWART: That's correct.

4 MR. HARRINGTON: And, am I correct in
5 saying that they don't own the land, they're leasing the
6 land? Who owns the actual asset itself, the power plant
7 that is to be built? I think that's still PJ --

8 CHAIRMAN BURACK: PJPD, the way the
9 arrangements are currently structured. What we don't
10 know, we've been told by Mr. Bartoszek is that there may
11 be, in the course of the final financing transaction here,
12 there may be some restructuring of the entities, and that
13 ultimately this could all end up being collapsed into a
14 single entity or potentially different entities from what
15 we have now. So, it's really a matter of whether or not
16 we feel we need to put some belts and suspenders on this
17 to ensure that, however this ends up, that the permits are
18 going to be complied with.

19 DIR. STEWART: I think we ought to be
20 consistent and comprehensive, in terms of, you know, who
21 we put on the hook for the responsibilities with regard to
22 all the permits.

23 CHAIRMAN BURACK: So, essentially, what
24 we'd be talking about here is a condition that says that,

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1 regardless of in whose name the permit is actually issued,
2 we're expecting the other entities here, and their
3 successors and assigns, to guarantee performance under the
4 terms of those permits.

5 MR. HARRINGTON: Can we even go further
6 and say that applies to all the terms of the Certificate?
7 Because there are other things being considered here that
8 are outside of the permits. Some of these other
9 provisions we've talked about, if this is -- we're not
10 sure of who's running what show with the management
11 structure, putting all three down I think would be -- make
12 sure that, if they get changes, they're covered.

13 CHAIRMAN BURACK: I think we could do
14 that, and, again, I'm not sure if we've been able to
15 locate it in the transcript, but I believe that we had a
16 statement on the record, from either Attorney Needleman or
17 from an officer of one of the entities, stating that they
18 would find such a provision to be acceptable.

19 DIR. MUZZEY: At the bottom of Page 52,
20 Mr. Bartoszek says "Yeah, I mean, I think, generally, with
21 respect to permit conditions, the various entities on the
22 board are willing to all agree to guarantee adherence with
23 those permit conditions."

24 So, at least there, there's a commitment

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1 to the permit conditions. And, I think elsewhere we've
2 seen PJPD be willing to guarantee all of the conditions of
3 the permit.

4 CHAIRMAN BURACK: Right. I think you're
5 correct about that. Okay. On Page 21, of August 26th, --

6 MR. HARRINGTON: This is still morning
7 session?

8 CHAIRMAN BURACK: This is going earlier
9 in the same day here. And, this is cross-examination of
10 Mr. Bartoszek, by Mr. Needleman, I believe.

11 MR. HARRINGTON: Pretty straightforward.

12 CHAIRMAN BURACK: And, again, I'll go to
13 the middle of Page 21, on Line 8. Mr. Needleman asks
14 "Mr. Iacopino also asked you yesterday whether NewCo would
15 be willing to guarantee the performance in some form",
16 that is the performance of the conditions of the
17 Certificate, that's referenced in the prior question.
18 And, then, he asked "Have you had a chance to discuss that
19 issue with NewCo?" Bartoszek says "Yes, I have." Mr.
20 Needleman then asks "And, is it your understanding that,
21 if the Committee desires it, NewCo would be willing to be
22 bound by the conditions and obligations and requirements
23 of the Certificate?" Mr. Bartoszek says "Yes, that's
24 correct."

[DELIBERATIONS]

1 MR. HARRINGTON: Bingo.

2 MR. IACOPINO: And that, if you go after
3 that to Page 46, I think Ms. Muzzey addressed this before,
4 but there's also that PJPDP, similar answer, on behalf of
5 PJPDP, where, Line 14, Page 47, "Because PJPDP is the owner
6 of the assets and the owner of the property, would you be
7 willing to investigate a condition or some way similar to
8 the NewCo condition that would bind PJPDP to those
9 conditions as well?" And, the answer by Mr. Bartoszek is
10 "I'm quite sure that we would be" -- that "I'm quite sure
11 that would be acceptable. We offered the NewCo guaranty,
12 because that's the parent organization of PJPDP. But I'm
13 sure that would be fine as well." And, then, there's
14 actually additional discussion that goes on, getting back
15 to some of the brownfield documents on Page 48.

16 CHAIRMAN BURACK: And, there is
17 discussion also there of Aware. Mr. Brooks says, in
18 response to that response, Mr. Bartoszek, he says "Okay.
19 And, I ask that just because NewCo does have the
20 100 percent ownership, but they go through Aware, and then
21 Aware goes through PJPDP." And, Bartoszek answers
22 "Correct". And, Mr. Brooks says "So, I did want to ask
23 you if you'd be willing to do that." And, there's further
24 discussion here about conditions. But I think that's --

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1 and that's probably as much detail as we have.

2 I think my sense of what we've heard
3 here, based on what we have read in the testimony here, is
4 that we could appropriately have a condition that requires
5 all of the other parties here that are part of the,
6 really, the ownership structure to guarantee the
7 performance of the other parties under the terms of -- all
8 of the terms and conditions of the Certificate. And, this
9 would be binding on successors and assigns as well. Okay?

10 I think, by approaching these issues in
11 this way, we have effectively addressed any other
12 guarantee type issues or concerns that we had with respect
13 to performance generally, as well as specific -- with
14 reference to specific obligations. And, that we've also
15 found a way to ensure that new owners would also be bound
16 to honor all the conditions of the Certificate.

17 Does that sound right to everybody?

18 Okay.

19 DIR. MUZZEY: Are you putting Aware in
20 that group?

21 CHAIRMAN BURACK: Yes. I think we would
22 need to include Aware in that group as well. Again, I
23 think that, by structuring this through a set of
24 guarantees, corporate guarantees, as opposed to some other

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1 structure, that is, we could talk about making all of the
2 parties parties to the Certificate, if we wish to do that
3 as well. I don't know if that's something we've done in
4 the past or not, Attorney Iacopino? No, we have not.

5 I think, unless others feel differently,
6 I'm comfortable with our structuring this through a set of
7 guarantees. I am -- I think we do need to be careful
8 about not imposing conditions in such a way that we could
9 start dictating some kind of financial or corporate
10 structure or be somehow having impacts on the way the
11 corporate transactions are being addressed beyond what
12 certainly it's our intention to do. We're just looking
13 for assurances that things are not going to go astray
14 here, it sounds like. Everybody comfortable with that?
15 Okay.

16 Are there any other conditions that we
17 should be talking about here that we have not yet
18 addressed?

19 (No verbal response)

20 CHAIRMAN BURACK: Before I forget it, we
21 did include the Homeland Agreement in a final agreement
22 that they can provide to us, correct?

23 MR. IACOPINO: Yes.

24 CHAIRMAN BURACK: Homeland and/or

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1 Fibrowatt?

2 MR. IACOPINO: Yes.

3 CHAIRMAN BURACK: Okay. Mr. Stewart,
4 you had something else?

5 DIR. STEWART: Yes, just to clean up a
6 loose end on the soil monitoring requirement that we
7 talked about earlier this afternoon. I have language that
8 I crafted. I called Mike Wimsatt, the Waste Management
9 Division Director, at the break and cleared it with him.
10 So, I have language. I can read it or provide it at this
11 time.

12 CHAIRMAN BURACK: Why don't you read it
13 to us, and then give it to Attorney Iacopino.

14 DIR. STEWART: Okay. Okay.

15 "Excavations and excavated soils shall be screened for the
16 presence for the presence of contamination by oil and
17 hazardous substances in accordance with the work plan
18 approved prior to construction by the Waste Management
19 Division of the Department of Environmental Services. Any
20 contaminated soils discovered during construction shall be
21 reported to DES in accordance with New Hampshire statutory
22 and regulatory requirements and shall be managed in
23 accordance with state and federal requirements subject to
24 approval by DES in accordance with the approved work

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1 plan."

2 So, in essence, there will be a work
3 plan submitted to DES on how soils will be screened and
4 handled if they should be determined to be contaminated to
5 our Waste Management Division. The Waste Management
6 Division will approve the work plan prior to construction.
7 It will be implemented. And, if there's contaminated
8 detect -- contamination detected, it will be reported to
9 DES, as it would be under statute anyway.

10 CHAIRMAN BURACK: Okay. Thank you.

11 DIR. STEWART: And, I will provide this
12 to Mr. Iacopino. It's almost as much of a challenge as
13 trying to transcribe Mr. Harrington when he talks fast,
14 due to my poor writing.

15 CHAIRMAN BURACK: Thank you.

16 MR. HARRINGTON: Mr. Chairman?

17 CHAIRMAN BURACK: Yes, Mr. Harrington.

18 MR. HARRINGTON: I just wanted to kind
19 of close up this loose end on this Rath, Young, Pignatelli
20 letter. I assume, Mike, you'll -- Mr. Iacopino will get
21 it to the rest of the Committee, the thing we took
22 administrative notice of?

23 CHAIRMAN BURACK: Yes, we will provide
24 copies to --

[DELIBERATIONS]

1 MR. HARRINGTON: And, what I wanted to
2 say is that, in looking at this, and people can draw their
3 own conclusions, but it appears in Sections 7 and 8
4 specifically, they're saying that their project financing
5 is "highly dependent on the contract becoming effective
6 November 10th". And, the reason for that is because they
7 need to get that time frame to go after these various tax
8 credits, which expire January 1st, 2007 [2011?]. In
9 another part of the testimony it's stated that it's -- I
10 think they use the word "important" part of the financing
11 is the investment tax. But, when you actually go through
12 and look, there's another part of the testimony that says
13 they can do it without the various -- I guess it would be
14 called the "Investment Tax Credit" and the "New Market Tax
15 Credits". And, in fact, the pro forma that they presented
16 doesn't show that, even though, to make things a little
17 bit more confusing, the infamous slide 65, or whatever it
18 is there, with the little blocks, that shows, I think,
19 \$12 million or \$10 million worth of New Market Tax
20 Credits. It doesn't show up, as best I can tell, I'm not
21 an accountant, on the pro forma. But, in the two letters
22 of comfort, there is no restriction on qualifying for
23 those tax things. There's a punch of other stuff, but
24 those ones aren't listed. So, I guess we'd have to make

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1 the assumption that they feel they can go forward and
2 their comfort letter issuers feel they can go forward with
3 the viability on the other conditions listed in the
4 comfort letters without getting the tax credits.

5 CHAIRMAN BURACK: Mr. Harrington, thank
6 you very much for your follow-up on that. That's very
7 helpful. Director Muzzey?

8 DIR. MUZZEY: Do we need a separate
9 condition regarding the EPA Agreement and the Covenant Not
10 To Sue?

11 CHAIRMAN BURACK: I think we have
12 effectively covered those with the broader agreement that
13 we -- or, condition that we discussed that would require
14 conditioning of any environmental permits, as well as
15 those two documents or obligations as well. I think that
16 was how we covered that.

17 DIR. MUZZEY: Okay.

18 CHAIRMAN BURACK: Are there any other
19 conditions that anyone thinks we should be considering
20 here? Mr. Northrop.

21 MR. NORTHROP: Not a condition, but just
22 another loose end. Do we have to do anything with that
23 stack of petitions that were found?

24 CHAIRMAN BURACK: Oh, thank you. Thank

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1 you. Just want to acknowledge that we do, in fact, have
2 here, and I think many of us have already had a chance to
3 look at this, we do have a stack of petitions. I'll just
4 read from a sample of these. I'll just read the cover
5 letter with these.

6 It reads: "These signatures have been
7 transcribed to an Excel spreadsheet in order to identify
8 the duplicates. Signatures that were hard to read were
9 cross referenced using address and/or phone number."
10 Then, there is some more detail here about how these were
11 compiled. And, questions about the spreadsheet should be
12 addressed to a Mr. Carl Belanger, who appears to have a
13 residence at 19 Alpine Street, in Gorham.

14 But there are petitions that have been
15 signed by many people, with their names, addresses, their
16 city or town of residence, and their phone numbers. And,
17 I'll just read what the language says at the top of the
18 petition.

19 It reads: Citizens Petition on Laidlaw
20 Project. Whereas: The Laidlaw Biomass project will
21 create economic benefits [to] the North Country both
22 immediately and over the long-term; biomass power is a
23 clean, carbon-neutral and renewable source of energy for
24 our future; a biomass plant will stimulate the

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1 redevelopment of our wood industry; and our City is in
2 need of the jobs and tax revenue a biomass plant will
3 create. We, the undersigned, do hereby express our
4 support for the redevelopment of the Burgess Mill site
5 into a biomass energy plant and urge the Mayor and City
6 Council of Berlin to work constructively with
7 representatives of Laidlaw Berlin BioPower, LLC, to make
8 this a project that the City of Berlin and surrounding
9 towns can all be proud of."

10 And, again, we have a stack, probably
11 more than an inch thick, of these original signed
12 petitions and some summary spreadsheets. And, again, I'll
13 just circulate these, again, for any who would like to see
14 these.

15 I will also point out that we have been
16 receiving public comment, members of the Committee I
17 believe have been receiving copies by email of the public
18 comments that have been filed with the Committee. And, we
19 have discussed many of those here during the course of our
20 proceedings. So, --

21 MR. IACOPINO: Okay. I'm going to give
22 you a sum -- want me to just --

23 CHAIRMAN BURACK: Go ahead. I'm going
24 to ask Attorney Iacopino to provide a summary of all the

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1 conditions that we have discussed today. We'll go through
2 -- have him go through that summary. Make sure that, in
3 principle, those are the conditions that we believe should
4 be attached to a certificate. Assuming that they are as
5 we would want them to be, I will then ask for a motion to
6 grant a Certificate, subject to these conditions. And, we
7 will, in that motion, also request that Attorney Iacopino
8 draft an order for our review, setting forth the basis for
9 our decision and the terms of the Certificate.

10 MR. IACOPINO: Okay. I'm just going to
11 go through these. They're in, I believe, just the order
12 that we went through. Some of them I might have moved
13 around. First condition is that the Air Permit issued by
14 DES on July 26, 2010, Exhibit 50, will become part of the
15 Certificate, the conditions therein will be part of the
16 Certificate. The DES is granted the administrative
17 authority to make minor amendments, and the authority to
18 issue the final Operations Permit as well. And, I'll use,
19 in the actual language, I will use the amendment language
20 from the statute.

21 The Alteration of Terrain Permit, the
22 same condition; that's Exhibit 46, along with the
23 condition that administrative authority to make minor
24 amendments. The Shoreland Permit likewise will be

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1 included as a condition, and all of those conditions will
2 be included as well, along with the grant to DES to
3 administer any minor amendments. The same goes for the
4 Indirect Industrial Discharge Request and the Sewer
5 Permit, with the same authority delegated to DES to make
6 any minor amendments. Then, there is the -- an additional
7 condition, with respect to the water quality issues that
8 will -- is the condition which Director Stewart read
9 previously. I'm going to summarize it, that all
10 excavations will be monitored by or reviewed by the --
11 whatever the name of the expert was that --

12 MR. HARRINGTON: "Environmental
13 monitor", I believe, wasn't it?

14 MR. IACOPINO: By the environmental
15 monitor, and that there will be a soil contamination plan
16 that will be pre-approved by the Division of Waste
17 Management.

18 We then get into the Power Purchase
19 Agreement. Number one, that the Power Purchase Agreement
20 with Public Service will be a -- that it will be a
21 condition of the Certificate that the Applicant have the
22 Power Purchase Agreement with Public Service that's in
23 this record. Number two, that it be approved by the PUC.
24 Number three, that if it's modified by the PUC, that the

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1 modified Power Purchase Agreement will be filed with the
2 Site Evaluation Committee with any changes and with any
3 other materials supporting the financial capability of the
4 Applicant under the new Power Purchase Agreement. And,
5 the SEC, the Site Evaluation Committee, will determine
6 whether any further hearing is necessary after that
7 filing. There was also --

8 CHAIRMAN BURACK: If I could just add to
9 that, I think we expect that a final version of the PPA
10 will be filed with the Committee, whether it's the
11 originally proposed or a modified form of that.

12 MR. IACOPINO: Next, the Fuel Supply
13 Agreement with Cousineau must be finalized in a manner
14 that is materially consistent with what has been provided
15 to the Site Evaluation Committee, and that must be filed
16 with us. As well as the EPC Agreement and the Pre-EPC
17 Agreement with Babcock & Wilcox must be finalized in a
18 fashion that is materially consistent with what has been
19 provided to us. And, they shall file copies of that.
20 And, the same thing with the Homeland Renewable and
21 Fibrowatt agreements, that those must be finalized in a
22 manner that's materially consistent with what's been
23 presented to us. And, copies of those contracts should be
24 filed as well.

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1 CHAIRMAN BURACK: I think we need to be
2 careful about that. I'm not sure that there's an
3 expectation of material consistency for -- we haven't even
4 seen an EPC contract yet, Pre-EPC contract we have seen,
5 but I'm not sure if we've actually seen the operations
6 agreement with Homeland Renewable and Fibrowatt. So, I
7 think it's more that we just want to have copies of the
8 final versions of those documents signed with us, not
9 necessarily that there's a material consistency
10 requirement.

11 MR. HARRINGTON: We haven't seen them
12 yet.

13 CHAIRMAN BURACK: Okay.

14 MR. IACOPINO: I was trying to be
15 consistent in my notes. Okay. Then, we get down to, and
16 this might be out of order, that we'll be notified of any
17 changes in senior personnel management of the Applicant.
18 That they will submit to us, once this closing has
19 completed, the complete final closing package. We will be
20 provided with a copy of the management contract between
21 NewCo and the Applicant. Any change in the EPC contractor
22 is subject to approval by this Committee. Any change in
23 the operator, meaning Homeland Renewable or Fibrowatt, is
24 subject to approval by the Site Evaluation Committee. Any

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1 change in the Fuel Supply Agreement is going to be subject
2 to approval by the Site Evaluation Committee.

3 CHAIRMAN BURACK: When you say "any
4 change" --

5 MR. HARRINGTON: Would that be a
6 material change?

7 CHAIRMAN BURACK: It's not a change in
8 the agreement itself, it's a change in the party that
9 would be providing the agreement.

10 MR. HARRINGTON: Okay. I'm sorry.

11 CHAIRMAN BURACK: In other words, if
12 they were going to substitute some other entity for
13 Cousineau.

14 MR. IACOPINO: I should say
15 "contractor".

16 CHAIRMAN BURACK: Yes, "contractor".

17 MR. IACOPINO: Again, I'm going from
18 notes. I've already said any changes in senior
19 management, although we delineated even further, the
20 senior management of NewCo, PJPD, Laidlaw Berlin BioPower,
21 or Aware will receive notice of that. Of course, they
22 need to complete -- they need to have a complete financing
23 package before they can begin construction.

24 CHAIRMAN BURACK: We may want to add to

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1 that, with respect to the operating entity, the
2 contracting entity, that is, if the plant manager were
3 going to change up there, do we want to have notice of
4 that?

5 MR. IACOPINO: You mean the person?

6 CHAIRMAN BURACK: The person, the
7 individual. Didn't we have another -- maybe we don't
8 care.

9 MR. HARRINGTON: We don't know now who
10 --

11 DR. KENT: We don't know who it is.

12 DIR. STEWART: We don't know.

13 MR. HARRINGTON: I don't think anybody
14 does.

15 CHAIRMAN BURACK: Okay. Let's leave
16 that alone. Okay.

17 MR. IACOPINO: The condition that they
18 have to have a complete financing package in place before
19 they begin construction. Well, we call it
20 "decommissioning", but it didn't turn out to be
21 decommissioning. But, basically, and I may have lost
22 track of this one, that we're going to require the
23 Applicant to provide a decommissioning plan, with the
24 criteria that they will leave the property no worse than

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1 it was found, under the "brownfields" doctrine. That they
2 will discuss -- oh, and that they will also provide us
3 with the estimated cost, and provide a method for security
4 or bonding of that decommissioning in that sense, in other
5 words, leaving the property no worse than it was found.

6 CHAIRMAN BURACK: I think --

7 MR. HARRINGTON: There was also the part
8 about the safety issue, leaving it no worse than it was
9 found, but in a safe and secure condition.

10 DIR. MUZZEY: No threat to public
11 safety.

12 CHAIRMAN BURACK: Just want to --

13 MR. IACOPINO: Okay. I've added that
14 in. We will be provided with proof of all insurance
15 coverages, including liability insurance coverage.

16 The Stipulation with the City of Berlin,
17 which is City Exhibit Number 5, will become a part of the
18 Certificate. The Applicant is directed as a condition to
19 negotiate with the City to provide an agreed upon
20 structure for an ombudsman. This should occur prior to
21 the commencement of actual construction, and it will last
22 for the duration of construction and the first 12 months
23 of operation. And, with respect to this particular
24 condition, the idea is to provide an informal means of

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1 dispute resolution on complaints before things percolate
2 up to the Site Evaluation Committee. I did note that
3 Dr. Kent dissented on that particular condition.

4 CHAIRMAN BURACK: Could I just suggest
5 that, while you've got this word as saying it's an
6 "ombudsman", I think we probably want to leave it broader
7 than that. It's an ombudsman or some other structure that
8 the City and the Applicant agree would be workable. Now,
9 certainly, ombudsman sounds like it may be the best way to
10 do it, but I'm not sure we want to be dictating a specific
11 approach here.

12 MR. IACOPINO: And, then, we're also
13 going to require the City to negotiate with -- I'm sorry,
14 require the Applicant, who is the only person we can
15 require to do anything, to negotiate with the City and
16 provide us with an informal dispute resolution process
17 regarding issues stemming between -- from the Certificate,
18 between the City itself and the Applicant. I imagine that
19 that would, in particular, pertain to the conditions
20 contained in City's Exhibit Number 5.

21 The next set of conditions deals with
22 Exhibit 76, the Sustainability Agreement. And, I may have
23 this a little messed up. But that the Applicant will
24 provide the Site Evaluation Committee and DRED the results

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1 of the survey required by Exhibit 76 and a summary of all
2 efforts to comply with Paragraph 6 in Exhibit 76. They
3 will provide us with the data from -- I'm sorry, with
4 reports from the data from Section 9, and also from the
5 data at Paragraph 8, on Page 8, of City Exhibit 5. And,
6 this information will be provided to the Site Evaluation
7 Committee and to DRED on an annual basis. In addition to
8 that, they will also provide the total volume of biomass
9 that was provided.

10 CHAIRMAN BURACK: To the facility, on an
11 annual basis.

12 MR. IACOPINO: To the facility, right,
13 on an annual basis, that's an addition also?

14 CHAIRMAN BURACK: Yes.

15 MR. IACOPINO: They will report all of
16 the information that they get in their surveys, plus the
17 information from Paragraph 9 of the sustainability
18 condition, which is the quarterly records of -- or, the
19 records of on-site -- the records kept on-site about
20 deliveries.

21 CHAIRMAN BURACK: And, again, I think
22 what --

23 MR. IACOPINO: I may have duplicated
24 that in there.

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1 CHAIRMAN BURACK: And, I think what
2 we're asking for is not copies of every single record they
3 have, but just a summary.

4 MR. IACOPINO: Right, a report.

5 CHAIRMAN BURACK: We're looking for a
6 summary report. Just a very quick overview of the basic
7 information that they have about their wood supply, just
8 so that we have a basis for knowing that, in fact, they
9 are meeting the conditions that they have -- that they
10 have stipulated to.

11 MR. IACOPINO: Also, with respect to the
12 sustainability condition, they're going to be required to
13 replace the reference to "Good Forestry in the Granite
14 State 1997 to 2010" as "and in the future as amended from
15 time to time." We then went to the interconnection --

16 MR. HARRINGTON: Mike, Mr. Iacopino,
17 before we leave there, did we, maybe I missed it, did we
18 ever actually say we were going to make that Exhibit 76
19 part of the condition -- part of the license or whatever
20 we're calling it?

21 MR. IACOPINO: Good point.

22 MR. HARRINGTON: I don't think we
23 actually incorporated it.

24 MR. IACOPINO: So, Exhibit 76 should be

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1 part -- should be part of the Certificate and conditions.
2 But I didn't say that here on the record, so
3 Mr. Harrington did pick it up. Thank you.

4 MR. HARRINGTON: You're welcome.

5 MR. IACOPINO: With respect to the
6 interconnection and transmission issues, I don't know if
7 this is actually a condition or if it will be in the
8 order, but we're going to make sure that everybody's aware
9 that the approval is for 70 megawatts, for 70 megawatt
10 nameplate capacity as on Page 38 of the Application. But
11 that the Certificate is conditioned on the Applicant
12 obtaining all approvals that are necessary from the IOS --
13 from the ISO for that capacity, and also that they,
14 obviously, they don't operate without an interconnection
15 agreement, which would not be with ISO, but with, I guess,
16 Public Service in this particular case, because that's who
17 they interconnect with, which is part of the whole ISO
18 process.

19 But, then, we got into historical
20 conditions, any changes in the construction plans that
21 were originally submitted to DHR must be resubmitted to
22 DHR for further review and comment. If any new concerns
23 are raised about historical properties, there must be
24 consultation with DHR. If there are any unanticipated

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1 archeological conditions, they shall consult with DHR and
2 follow New Hampshire state standards for dealing with
3 unanticipated archeological conditions.

4 Next, the Applicant shall keep all fly
5 ash in a solo that comports with --

6 CHAIRMAN BURACK: Silo.

7 MR. HARRINGTON: Silo.

8 MR. IACOPINO: What did I say?

9 MR. HARRINGTON: You said "solo".

10 MR. IACOPINO: Oh. In a silo --

11 CHAIRMAN BURACK: We knew what you
12 meant.

13 MR. IACOPINO: In a silo that comports
14 with the specifications, and I have to look up the exhibit
15 number, but I know they gave us an exhibit with a
16 simulated silo in there.

17 And, then, I recommend, and I think this
18 is what you said, that we have the PJPD environmental
19 documents, we require each of the entities to cross
20 guarantee those. That all conditions of the Certificate
21 be cross guaranteed by all of the entities.

22 And, of course, then we have any change
23 in ownership or ownership structure has to be approved by
24 the Site Evaluation Committee. The conditions are binding

1 on all successors and assigns. And, then, soil
2 contamination condition, which I've referenced before, but
3 I have in here twice.

4 I believe that that is all of the
5 conditions that were discussed here today. I will point
6 out that sometimes, and I can't think of what they might
7 be, but there may be some other standard conditions that
8 the Committee normally puts in in these orders, I just
9 haven't thought of today. And, I didn't bring an old
10 order with me to see. So, what I would ask for leave to
11 do, Mr. Chairman, if, in fact, a motion is made, and there
12 is a vote to issue such an order, that I simply put those
13 other standard conditions in there for the Committee to
14 review prior to signature?

15 CHAIRMAN BURACK: That's fine. So, just
16 add to your list there "and any other standard
17 conditions". So, -- yes.

18 MR. NORTHROP: I just have one other.
19 We had -- one of the conditions was fly ash to be kept in
20 a silo. Was there any need about bottom ash to be
21 containerized?

22 MR. IACOPINO: Yes.

23 MR. WRIGHT: We did discuss that.

24 MR. NORTHROP: Should that be in

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1 addition to the fly ash in a silo?

2 MR. IACOPINO: Yes. I will put that in.
3 Thank you.

4 CHAIRMAN BURACK: Anything else that
5 anyone can think of before we move on here?

6 (No verbal response)

7 CHAIRMAN BURACK: Okay. So, there are
8 two different motions we're going to need here in a
9 moment. The first would be a motion to issue a
10 Certificate of Site and Facility to the Applicant, subject
11 to the conditions that have been discussed here today and
12 reviewed and outlined by Attorney Iacopino. With a
13 directive to Attorney Iacopino to memorialized the
14 decision and conditions in a written order, to be reviewed
15 in draft by the Committee -- or, I should say, by the
16 Subcommittee prior to issuance.

17 Is there a motion to that effect?

18 MR. HARRINGTON: So moved.

19 CHAIRMAN BURACK: Motion by
20 Mr. Harrington. Is there a second?

21 DIR. STEWART: Second.

22 CHAIRMAN BURACK: Second by Mr. Stewart.
23 Is there any discussion of the motion?

24 (No verbal response)

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1 CHAIRMAN BURACK: Hearing none, I would
2 ask that Mr. Iacopino call the roll here. I think we
3 should do this by roll call vote.

4 MR. IACOPINO: Dr. Kent?

5 DR. KENT: Yes.

6 MR. IACOPINO: Mr. Wright?

7 MR. WRIGHT: Yes.

8 MR. IACOPINO: Mr. Stewart?

9 DIR. STEWART: Yes.

10 MR. IACOPINO: Mr. Northrop?

11 MR. NORTHROP: Yes.

12 MR. IACOPINO: Mr. Janelle?

13 MR. JANELLE: Yes.

14 MR. IACOPINO: Ms. Muzzey?

15 DIR. MUZZEY: Yes.

16 MR. IACOPINO: Ms. Ignatius?

17 CMSR. IGNATIUS: Yes.

18 MR. IACOPINO: Mr. Harrington?

19 MR. HARRINGTON: Yes.

20 MR. IACOPINO: Mr. Chairman?

21 CHAIRMAN BURACK: Yes.

22 MR. IACOPINO: It's unanimous.

23 CHAIRMAN BURACK: Thank you. I think we
24 got everyone. There are no "no" votes, there are no

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1 abstentions.

2 MR. IACOPINO: I have one question.

3 CHAIRMAN BURACK: Yes.

4 MR. IACOPINO: Dr. Kent, did you wish to
5 dissent from that particular condition or not?

6 DR. KENT: I heard a variant of that
7 that makes me assent.

8 MR. IACOPINO: Okay.

9 CHAIRMAN BURACK: Okay. Very good. So,
10 we have taken a vote to issue a Certificate, subject to
11 conditions that we have discussed. This will be drafted
12 by Attorney Iacopino. Now, we are, by statute, we are
13 required to take action on an application within 240 days,
14 but there are provisions whereby we can suspend the
15 proceeding. And, I understand, Dr. Kent, you may have a
16 motion for us?

17 DR. KENT: I do, Mr. Chairman. Yes,
18 you're correct. By law, the SEC is required to issue a
19 final Certificate or deny a final Certificate of Site and
20 Facility within 240 days. That date is tomorrow, the 23rd
21 of September. However, RSA 162-H:6-a, IX, provides that
22 the Committee can suspend deliberations and extend the
23 time frame, if it's found to be in the public interest. I
24 would move that we suspend deliberations and extend our

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1 time frame for issuing a final decision until the 22nd of
2 October, that's a Friday, of 2010. I believe the
3 extension would be in the public interest, because it
4 provides the Subcommittee with time to complete a written
5 order and decision. This is in the public interest, I
6 believe, because it allows us to formulate a complete
7 order and decision that will maintain transparency and
8 ensures that full and complete disclosure -- disclosure,
9 excuse me, of the reasons for our decision are provided to
10 the parties, the public, and any reviewing court.

11 CHAIRMAN BURACK: Thank you. Is there a
12 second to that motion?

13 CMSR. IGNATIUS: Second.

14 DIR. STEWART: Second.

15 CHAIRMAN BURACK: Commissioner Ignatius,
16 thank you, the second to the motion. Okay. Is there any
17 discussion of this motion? Mr. Northrop.

18 MR. NORTHROP: Just one slight
19 clarification. I think that you said that "tomorrow is
20 the 23rd", and, actually, tomorrow is the 22nd. Today's
21 the 21st, tomorrow's the 22nd. So, Thursday would --

22 DR. KENT: You're correct. We don't
23 need it then.

24 CHAIRMAN BURACK: That's right.

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1 DR. KENT: Then, I amend my motion.

2 CHAIRMAN BURACK: I'm not sure that
3 language was in the motion, was it? That was not in your
4 -- in your introduction, not in the motion itself?

5 DR. KENT: No. Yes, that wasn't in the
6 motion.

7 CHAIRMAN BURACK: Okay. All right.

8 DR. KENT: I'm still asking to extend to
9 the 22nd of October.

10 CHAIRMAN BURACK: Okay. Thank you. So,
11 there is a motion and a second. Is there any discussion,
12 further discussion of the motion?

13 (No verbal response)

14 CHAIRMAN BURACK: All in favor -- well,
15 let's do this by roll call. Attorney Iacopino.

16 MR. IACOPINO: Mr. Harrington?

17 MR. HARRINGTON: Aye.

18 MR. IACOPINO: Ms. Ignatius?

19 CMSR. IGNATIUS: Yes.

20 MR. IACOPINO: Ms. Muzzey?

21 DIR. MUZZEY: Yes.

22 MR. IACOPINO: Mr. Janelle?

23 MR. JANELLE: Yes.

24 MR. IACOPINO: Mr. Northrop?

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1 MR. NORTHROP: Yes.

2 MR. IACOPINO: Mr. Stewart?

3 DIR. STEWART: Yes.

4 MR. IACOPINO: Mr. Wright?

5 MR. WRIGHT: Yes.

6 MR. IACOPINO: Dr. Kent?

7 DR. KENT: Yes.

8 MR. IACOPINO: Mr. Chairman?

9 CHAIRMAN BURACK: Yes.

10 MR. IACOPINO: It's unanimous.

11 CHAIRMAN BURACK: I just want to point
12 out that the public record for public comment will remain
13 open in this proceeding until the time when we actually
14 have issued a final decision, which, at this point, could
15 be as late as the 22nd of October.

16 And, unless any members of the
17 Subcommittee have anything further, I just want to say
18 thank you to all of you for your patience, your endurance
19 and for your commitment to seeing this process through in
20 what I believe has been a very thorough, diligent and
21 professional manner, and I want to thank all of you for
22 your service. I also want to thank our counsel,
23 Mr. Iacopino. I want to thank our stenographers. And,
24 again, want to express my thanks to the counsel and to the

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1 parties who have participated in this proceeding, we very
2 much appreciate everybody's efforts here in making sure
3 that we have the information that we need to come to a, we
4 believe, a sound conclusion of this process.

5 Having said that, we, as a Subcommittee,
6 still have more work to do, because we will have to review
7 the draft. Obviously, we have suspended our proceedings
8 here to enable us to do that work. I don't anticipate
9 that we should have to reconvene in person between now and
10 the 22nd. But, if that becomes necessary, we'll let you
11 know. But, otherwise, we will be awaiting a draft from
12 Mr. Iacopino for review and final approval by the members
13 of the Subcommittee.

14 So, if there's nothing further, I will
15 ask for a motion to adjourn.

16 MR. HARRINGTON: So moved.

17 CHAIRMAN BURACK: Mr. Harrington moves.

18 MR. JANELLE: Second.

19 CHAIRMAN BURACK: A second. All in
20 favor?

21 (Multiple members indicating "aye".)

22 CHAIRMAN BURACK: Opposed?

23 (No verbal response)

24 CHAIRMAN BURACK: Thank you all. We

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1 stand adjourned.

2 MR. NEEDLEMAN: Thank you all for your
3 time.

4 CMSR. IGNATIUS: Thank you.

5 (Whereupon the deliberations were
6 adjourned at 5:22 p.m.)

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**SEC 2009-02 - DELIBERATIONS - DAY 2 PM - September 21, 2010
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