

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 January 29, 2010 - 10:30 a.m.
4 N.H. Public Utilities Commission
5 21 South Fruit Street, Suite 10
6 Concord, New Hampshire

7 In re: SITE EVALUATION COMMITTEE:
8 Docket No. 2009-03: Petitions of
9 Michael Laflamme and Howard Jones
10 (including 116 Registered Voters
11 from Berlin and 104 Registered
12 Voters from Gorham) for Review of a
29 MW Biomass Power Plant Developed
by Clean Power Development, LLC, and
Located in Berlin, Coos County, New
Hampshire. (Public hearing)

13 PRESENT: SITE EVALUATION COMMITTEE:
14 Thomas S. Burack, Cmsr. Dept. of Environmental Services
(Chairman of SEC - Presiding Officer)
15 Thomas B. Getz, Chrmn. Public Utilities Commission
16 (Vice Chairman of SEC)
17 Clifton C. Below, Cmsr. Public Utilities Commission
18 Amy L. Ignatius, Cmsr. Public Utilities Commission
19 Robert Scott, Dir. Air Resources Division (DES)
Glenn Normandeau, Dir. Dept. of Fish & Game
20 Brad Simpkins, Dir. Div. of Forests & Lands (DES)
Joanne Morin, Dir. Office of Energy & Planning
Elizabeth Muzzey, Dir. Div. of Historical Resources
21 Jeff Brillhart, Asst. Cmsr. Dept. of Transportation
Michael Harrington Public Utilities Commission

22
23 COURT REPORTER: Steven E. Patnaude, LCR No. 52
24

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2
3 ALSO PRESENT: Michael Iacopino, Esq.
4 Counsel for the Committee
Reptg. the Petitioners:
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CPD-0129.txt
Michael Laflamme
Howard Jones

Reptg. Clean Power Development, LLC:
James T. Rodier, Esq.
Mel Liston (President - CPD)
William Gabler (Project Mgr. - CPD)

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1 P R O C E E D I N G
2 CHAIRMAN BURACK: Good morning, Ladies
3 and gentlemen. We are here today for a public meeting of
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4 the New Hampshire Site Evaluation Committee. The Site
5 Evaluation Committee is established by RSA 162-H. The
6 membership of this Committee includes the commissioners or
7 directors of a number of state agencies, as well as
8 specified key personnel from various state agencies. And,
9 at this point, I would like to have all of the members of
10 the Committee who are present today to introduce
11 themselves.

12 And, I will start. My name is Tom
13 Burack. I am Commissioner of the Department of
14 Environmental Services, and, pursuant to RSA 162-H,
15 because I serve in that capacity, I also serve as the
16 Chairman of the Site Evaluation Committee.

17 And, I'll ask for introductions to start
18 to my far right here.

19 DIR. MORIN: My name is Joanne Morin.
20 And, I'm the Director of the Office of Energy & Planning.

21 DIR. MUZZEY: Elizabeth Muzzey. I'm
22 Director of the Division of Historical Resources and the
23 Department of Cultural Resources.

24 DIR. SCOTT: Bob Scott, Director of the
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1 Air Resources Division with the New Hampshire Department
2 of Environmental Services.

3 DIR. NORMANDEAU: Glenn Normandeau,
4 Director of Fish & Game.

5 CMSR. BELOW: Clifton Below, a
6 Commissioner at the Public Utilities Commission.

7 VICE CHAIRMAN GETZ: Tom Getz, Chairman
8 of the Public Utilities Commission and Vice Chair of this
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9 Committee.

10 CMSR. IGNATIUS: Amy Ignatius, a
11 Commissioner of the Public Utilities Commission.

12 DIR. SIMPKINS: Brad Simpkins, interim
13 Director of Division of Forests & Lands.

14 MR. HARRINGTON: Mike Harrington, New
15 Hampshire PUC.

16 ASST. CMSR. BRILLHART: This is Jeff
17 Brillhart, Assistant Commissioner with the New Hampshire
18 Department of Transportation.

19 CHAIRMAN BURACK: And, to my immediate
20 right is Attorney Michael Iacopino, who serves as legal
21 counsel to the Committee for this matter.

22 VICE CHAIRMAN GETZ: Yes, Mr. Chairman.
23 Since this is a new proceeding, and there's a requirement
24 under the rules that the PUC designate a Staff engineer

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1 for participation in the matter among the three PUC
2 Commissioners, I propose that Mr. Harrington be designated
3 as a Staff engineer to participate in this proceeding.

4 CMSR. BELOW: I second.

5 VICE CHAIRMAN GETZ: All in favor?

6 CMSR. IGNATIUS: I'm in favor.

7 CMSR. BELOW: Aye.

8 VICE CHAIRMAN GETZ: Okay. So, it's
9 unanimously approved that Mr. Harrington will be the Staff
10 engineer from the PUC for this proceeding.

11 CHAIRMAN BURACK: Very well. Thank you
12 very much. I would also just like to point out for the
13 benefit of all present, including the public and the

14 parties, as well as the press, that Committee members are
15 not at liberty to discuss this proceeding or any other
16 docket matters before the Site Evaluation Committee, later
17 today or at any other time. But any questions relating to
18 the proceedings can and should be directed to Attorney
19 Iacopino, again, who serves as legal counsel to the
20 Committee for purposes of this proceeding.

21 What I'd like to do now is to turn to
22 Docket Number 2009-03. I will note that a quorum is
23 present. And, this Docket Number 2009-03, entitled
24 "Petitions of Michael Laflamme and Howard Jones, including
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11

1 116 Registered Voters from Berlin and 104 Registered
2 Voters from Gorham, for a review of a 29 megawatt biomass
3 power plant developed by Clean Power Development, LLC, and
4 located in Berlin, Coos County, New Hampshire.

5 On November 25, 2009, Michael Laflamme
6 and Howard Jones each filed a petition with the Site
7 Evaluation Committee, which I will refer to as the
8 "Committee", entitled "Petition for the Site Evaluation
9 Committee to rule on the Clean Power Development, LLC,
10 Berlin Project." And, we will collectively refer to
11 Messrs. Laflamme and Jones as the "Petition" -- or,
12 "Petitioners", and to their Petition as the "Petition" or
13 "Petitions". The Laflamme Petition was endorsed by more
14 than 100 registered voters from the City of Berlin, Coos
15 County, New Hampshire; the Jones Petition was endorsed by
16 more than 100 registered voters of the Town of Gorham,
17 Coos County, New Hampshire.

18 On December 18, 2009, the Committee
Page 9

19 received confirmation from the Berlin City Clerk's Office
20 that the Laflamme Petition was endorsed by 116 registered
21 voters of Berlin. On December 21, the Committee received
22 confirmation from the Gorham Town Clerk indicating that
23 the Jones Petition was endorsed by 104 registered voters
24 from Gorham.

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1 The Petitions request the Committee to
2 assert jurisdiction under RSA 162-H:2, VII(g) and XII.
3 The role of the Committee in these circumstances is to
4 determine whether the proposed project should require a
5 Certificate of Site and Facility in order to satisfy the
6 findings and purposes of RSA 162-H:1.

7 On January 5, 2010, I issued an Order
8 and Notice for today's public hearing. The notice was
9 published in the Conway Daily Sun on January 8, 2010. An
10 affidavit of publication has been filed with the
11 Committee. On January 8, 2010, Clean Power Development
12 filed a written response to the Petitions. And, they have
13 subsequently filed additional materials with the Committee
14 yesterday. This hearing is held pursuant to the
15 Committee's authority as set forth in RSA 162-H:2,
16 subchapters VII and XI and RSA 162-H:4, subchapter II.

17 In this hearing we will proceed as
18 follows: First, I will allow the Petitioners, through
19 their representatives, to address the Committee and
20 explain the reasons why they believe the Committee should
21 exercise its discretionary jurisdiction in this case. The
22 Committee may have questions for the Petitioners. Clean
23 Power Development may have questions for the Petitioners

24 as well, and we will allow those questions once I am
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1 satisfied that the Committee's questions have been
2 answered.

3 Once we have heard from the Petitioners,
4 I will then ask Clean Power Development to make its
5 presentation. It is my understanding that Clean Power
6 Development has brought some of its development team, and
7 the Committee may have questions for them or for their
8 counsel, Mr. Rodier. Once the Committee has asked its
9 questions, I will allow the Petitioners, through their
10 representatives, to ask questions as well.

11 I also understand that the City of
12 Berlin is represented here today, and, if they wish to be
13 heard on the record, we will hear from them after we have
14 concluded the presentation from Clean Power Development.

15 Finally, if time permits, I will allow
16 comment from members of the public on the record. But, of
17 course, as always, we ask that any public comments be
18 brief and non-repetitious. Thereafter, we will either
19 proceed to deliberate on the issue before us or take such
20 other action as is appropriate at that time.

21 And, I might just note, for purposes of
22 everyone's planning, my expectations for today's
23 proceedings. I would anticipate that we will continue
24 until approximately noon. And, then, we would take likely
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1 between an hour and an hour and a quarter for lunch. And,

2 then, we will resume our proceedings here, probably till
3 approximately 4:00. And, we will assess at that time
4 where we are and whether additional time will be needed to
5 complete the hearing or whether we are already in
6 deliberations at that point. But we will play that -- we
7 will take that as things go here.

8 I think, before we ask -- well, I think
9 we probably should take appearances from the parties at
10 this point. And, would ask first, Mr. Jones and Mr.
11 Laflamme, if they would introduce themselves, and then I
12 will ask Attorney Rodier if he would introduce himself and
13 the people from Clean Power Development who are
14 accompanying him today. So, Mr. Jones and Mr. Laflamme,
15 would you please introduce yourselves at this time.

16 MR. LAFLAMME: My name is Mike Laflamme.
17 I'm a resident of Berlin, New Hampshire. And, I'm the
18 organizer of the Petition.

19 CHAIRMAN BURACK: Thank you, sir.

20 MR. JONES: I'm Howard Jones. And, I am
21 a resident of Gorham, New Hampshire. And, I'm
22 representing the Petitioners from Gorham.

23 CHAIRMAN BURACK: Thank you. Attorney
24 Rodier.

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1 MR. RODIER: Good morning. Jim Rodier,
2 Portsmouth, New Hampshire. And, with me is Bill Gabler,
3 the Project Manager, and Mel Liston is the President of
4 Clean Power Development. I indicated in my letter, at an
5 appropriate point, I'd be happy to swear them in so that
6 they can attest to any of the facts that we've represented

7 in our response or answer any questions anybody has.

8 CHAIRMAN BURACK: Thank you very much,
9 Attorney Rodier. And, I think we will -- we will have
10 them under oath when we get to them. But, I think, before
11 we get there, we're going to ask Mr. Jones and Mr.
12 Laflamme if they would make their presentations. And,
13 because I'm anticipating that there may be questions for
14 them, both from the Committee and possibly from Attorney
15 Rodier, I'm going to ask if they would each take an oath,
16 which will be administered by our stenographer.

17 (Whereupon Michael Laflamme and
18 Howard Jones were duly sworn and
19 cautioned by the Court Reporter.)

20 MICHAEL LAFLAMME, SWORN

21 HOWARD JONES, SWORN

22 CHAIRMAN BURACK: I'm also realizing
23 that we do have a representative from the City of Berlin
24 here. And, sir, would you like to state your name. If

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1 there is somebody from the City of Berlin who intends to
2 appear in this proceeding? Is there anyone at this point?
3 City of Berlin? I'm sorry.

4 MS. LAFLAMME: Hi. I'm Pam Laflamme.
5 I'm the City Planner.

6 CHAIRMAN BURACK: Thank you very much.

7 MS. LAFLAMME: You're welcome.

8 CHAIRMAN BURACK: Okay. Mr. Jones,
9 Mr. Laflamme, I understand you have a presentation that
10 you would like to share with us. The floor is yours, sir.

11 MR. LAFLAMME: Okay. Good morning, Mr.

12 Chairman and Committee members. My name is Mike Laflamme.
13 I am the originator of -- excuse me -- of the petition
14 from the residents of Berlin, New Hampshire. A brief
15 history of myself: I was a boiler operator for Fraser
16 Paper and operated the chemical recovery boiler and a 25
17 megawatt co-gen plant located at the former pulp mill
18 site, and currently the operator of two wood-fired boilers
19 and a 600 kilowatt turbine generator in northern Vermont.

20 Let me first state that we do not -- do
21 not oppose Clean Power Development. We all welcome with
22 open arms any industry that would like to locate in
23 Berlin, whether it would be the creation of one job or 100
24 jobs.

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1 One serious concern of ours is the fact
2 that the developers of Clean Power are also involved with
3 Concord Steam, which does not have a very good record in
4 regards to employees' safety and health. They've been
5 issued citations for willful violations where death or
6 serious physical harm is likely to have resulted from
7 hazards in the employer knew or should have known about --
8 or should have known about, excuse me, according to the
9 OSHA Regional News Release dated July 21st, 2009.

10 We had concerns that the former council
11 -- that the city -- excuse me. We had concerns that the
12 former City Council and Zoning Board members may lack the
13 technical qualifications, have personal agendas, and have
14 certainly proven to be unable to take an even impartial
15 look at both projects. This is why the state provides us
16 with the SEC, which has the technical expertise to review

17 the project, separate fact from fiction and safeguard the
18 communities in which these projects are located.

19 We wonder why the 29.5 megawatt plant is
20 coming in just under SEC radar. "29.5" is on their ISO
21 Application. While circumventing the SEC, they've
22 attempted to use the same Committee to stop the Laidlaw
23 Project. CPD has made an issue of these Laidlaw financing
24 -- had made an issue of Laidlaw's financing, but has not

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18

1 disclosed theirs. Do they have the money to complete the
2 project?

3 We would like the impartial eye of the
4 state to review this project, as well as Laidlaw in
5 Berlin, given them both the same scrutiny that plants
6 their size should have. After all, they'll have an equal
7 impact on Berlin and the surrounding communities. We know
8 that this Committee, this group of professionals and
9 experts in their fields, will put the best interests of
10 the citizens of Berlin and the State of New Hampshire
11 first.

12 I would also like to, if I may, submit
13 an exhibit. It's minutes of the complaint against Public
14 Service of New Hampshire prehearing conference.

15 CHAIRMAN BURACK: We will mark that as
16 "Petitioner's Exhibit Number 1".

17 (The document, as described, was
18 herewith marked as Petitioner's
19 Exhibit 1 for identification.)

20 MR. RODIER: Is a copy available for us?

21 CHAIRMAN BURACK: Is there a copy

22 available for the other parties?

23 MR. LAFLAMME: I don't have it.

24 MR. RODIER: Can I look at it?

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1 MR. LAFLAMME: Yes, I have one.

2 MR. RODIER: I don't need to keep it. I
3 just want to see what it is. May I just have a brief
4 moment?

5 (Short pause.)

6 MR. RODIER: I'm very familiar with the
7 section that you're referring to. So, I've got no problem
8 with that.

9 CHAIRMAN BURACK: Please proceed, Mr.
10 Laflamme.

11 MR. LAFLAMME: For myself and on -- For
12 myself and on behalf of the Petitioners, I'd like to thank
13 you for your time and serious consideration on this
14 matter. Thank you very much.

15 CHAIRMAN BURACK: Thank you. Yes.
16 Please do, Mr. Jones. Please proceed.

17 MR. JONES: Good morning. My name is
18 Howard Jones and I am here representing the 104
19 petitioners from the Town of Gorham, who are requesting
20 oversight by the SEC of the proposed Clean Power
21 Development, I'll refer to as "CPD" from now on, biomass
22 power plant in Berlin, New Hampshire. Like Mike Laflamme,
23 I am, too, very familiar with what is now Laidlaw Biomass
24 -- BioPower Boiler, having worked as a Process/Process

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1 Control Engineer with responsibility of overseeing the
2 advanced computer controls on the recovery boiler.

3 And, as you are aware, the proposed
4 29 megawatt CPD facility is one of two biomass projects
5 being proposed for the North Country. The second being
6 the 70 megawatt Laidlaw Biomass conversion of the former
7 Fraser Pulp Mill Recovery Boiler. While it is true that
8 the majority of petitioners are Laidlaw supporters, it is
9 not the intention of this petition to undermine the CPD
10 project. However, having said that, there have been a
11 number of CPD comments in recent months that bring into
12 question its findings and motivation.

13 CPD has stated on several occasions that
14 there was not adequate power grid capacity for all of the
15 proposed additional North Country users, and that there is
16 an inadequate wood supply to support more than one biomass
17 facility.

18 ISO New England recently published a
19 report indicating that there was adequate additional
20 capacity for both biomass facilities, as well as the 99
21 megawatt Noble Wind Farm in Stark. This is supported by
22 Laidlaw's own evaluation of the same.

23 CPD's initial proposal was for two
24 40 megawatt biomass boilers, but was later reduced to one

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1 29 megawatt unit, after it claimed wood studies suggested
2 the region couldn't support more than 340,000 tons.

3 A recent conversation with an individual
4 who has 35 plus years in the wood procurement business in
5 the North Country offered a different perspective on the

6 wood supply issue. He states that wood consumption was
7 higher in the '70s and '80s than that which is anticipated
8 today. Moreover, he says the issue is not with
9 forestation, but rather logging capacity. Early on,
10 virtually all of the major pulp producers owned and
11 managed their own timberland. The late '70s and '80s saw
12 a rapid drop in consumption. Reduction in pulp demand,
13 overseas competition, the sale of timberlands, resultant
14 closure of pulp mill and other wood products facilities has
15 led to a significant drop in logging capacity.

16 As a result, he went on to say that the
17 wood procurement business is extremely dynamic, changing
18 week by week. It is not uncommon for wood prices to drop
19 \$10 a ton due to pulp demand, nor is it uncommon to have
20 to reach as far as New York or Quebec to obtain wood
21 supplies. When asked about procuring 340,000 tons per
22 year from within a limited 30-mile radius, he felt this
23 was very unlikely. I have heard secondhand that 90
24 percent of the wood harvested within the 30-mile radius is

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1 currently consumed by other existing facilities. The idea
2 that the area can't support more than 340,000 tons without
3 this self-imposed 30-mile harvesting radius is a
4 falsehood. For years the pulp mill consumed well in
5 excess of this amount. When Fraser took over the
6 facility, they shut down the entire softwood line,
7 removing over 150,000 tons per year. At the time of the
8 mill closure in 2006, Fraser was consuming 700,000 tons
9 per year of hardwood, 200,000 tons per year of biomass for
10 its bark boiler, and Groveton was consuming another

11 200,000 tons per year of biomass. These tonnages,
12 together with the fact that whole tree chipping increases
13 yield per acre by 30 percent, support Laidlaw's claim of
14 adequate wood supply.

15 It has been suggested in the testimony
16 before the PUC on November 3rd, 2010 that veneer and
17 dimensional lumber would be sacrificed for biomass. This
18 is nonsense. I personally had a discussion with a friend
19 that witnessed bidding on some wood that was being used in
20 our very own woodyard, and one of the pieces went for
21 \$900. Now, are you going to turn around and go chip up
22 something for biomass, when you can sell a log for \$900?
23 Not likely. Veneer and dimensional lumber command premium
24 prices relative to pulp wood and biomass, with biomass

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23

1 being low on the totem pole.

2 The issue about distance and pricing and
3 everything, the whole business of issues of wood supply is
4 as much about trucking as it is about trees. When you
5 talk about somebody going from Quebec, all the way down to
6 Jay, Maine, what they do is they'll take an open top
7 trailer, live bottom. They'll truck the chips down to
8 Jay, and pick up, let's say, veneer logs and this sort of
9 thing, and put them right back in and they take them
10 north. That's how they recover their price. That they
11 cannot turn around and support themselves at all times by
12 running an empty truck one direction. So, it's a very --
13 it's a big matrix that they have to run in order to be
14 able to do this.

15 When I first learned of CPD's proposal
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16 to site a plant near the waste treatment facility, two
17 things came to mind: Where was it to be specifically
18 located and how was the wood to be routed into the
19 facility? While the former is understood, the latter is
20 still a mystery. I would like to show a brief overview of
21 the existing route so that you can understand some of the
22 issues.

23 If I could, I'd like to, is that okay?

24 CHAIRMAN BURACK: Please proceed.

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24

1 MR. JONES: All right. I don't know the
2 best way to set this up so everybody can see. Is that
3 okay?

4 CHAIRMAN BURACK: I think just the way
5 it is. If you could just please speak loudly. And,
6 Steve, if you can't hear him, let us know.

7 MR. IACOPI NO: Actually, can you try to
8 move the microphone on that table as close to you as
9 possible?

10 MR. JONES: This one here?

11 (Short pause.)

12 MR. JONES: Are you with me all right
13 here?

14 MR. IACOPI NO: There you go.

15 MR. JONES: What I'd like to do is just,
16 and this is, unfortunately, not a super clear map here,
17 but what we're looking at here is an overview, a Google
18 map of the Berlin location. Now, what you're looking at
19 is you're looking at CPD on this, on the east side of the
20 river, this is the Androscoggin. You'll see the city

21 waste plant. And, up here [indicating] is the Mount
22 Carberry facility.

23 Now, what will happen is that you will
24 have a choice of bringing logs in up Route 16, over the
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25

1 Cleveland Bridge, or you can bring them north, down Unity
2 Street here [indicating]. So, we have the ability to go
3 north and south. If you were heading for the Laidlaw
4 plant, you'd just go straight through the intersection.
5 At the present time, without a spur or whatever, what
6 would happen, if you were coming in from the south, you
7 would have to bring logs up Unity Street, go to East
8 Mason, up Goebel Street, down Devens Street, and then onto
9 what is actually Shelby. This is Shelby Street here
10 [indicating].

11 So, what I'm going to do is, I'm going
12 to, on the next slide, I will take -- I will put you onto
13 the bridge here [indicating], and we're going to take a
14 little trip up this route right here [indicating], to try
15 to get a flavor for what the existing situation is all
16 about.

17 This is going to work, right? Yes, it
18 is. What we're looking at here is we're looking at Route
19 16. This is -- this is the Cleveland Bridge, goes onto
20 Unity Street here [indicating]. You're seeing the Laidlaw
21 facility off in the distance. The Clean Power facility is
22 off to the right, over here [indicating].

23 Now, I didn't stage this. You can't
24 really make it out, but there are actually three pulp

1 trucks, if you will, or log trucks, coming across the
2 bridge at this time. I don't know why we're losing it,
3 but we are.

4 What you're going to do is you're going
5 to go across the Cleveland Bridge. You're going to head
6 north on Unity Street. You're going to come up into an
7 intersection right here. You're going to bang a right,
8 and you'll see Goebel Street right here [indicating].

9 Now, what I want to emphasize here is
10 that you're going to be talking 50 trucks a day, if you
11 continue to use this route, which is the only route at
12 this time, you'll be talking 50 trucks a day up Goebel
13 Street, and those same 50 have to come back. Now, if
14 somebody is going to -- you're not going to stagger it
15 every 14 minutes or whatever the heck it is. You're going
16 to have people piling in early in the morning, they're
17 going to want to get there, and they'll want to go. And,
18 what we're going to do is we're going to go up Goebel
19 Street. And, this is the exit right, this is actually
20 Devens Street right here [indicating]. We're going to
21 hang a right, and imagine pulling a pulp truck around this
22 corner. And, we're going to go right down to this, this
23 is actually Shelby Street [indicating]. This is Shelby
24 Street that the CPD Project is listed on. From here, down

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1 to the facility, is nine-tenths of a mile.

2 I want to give you a flavor for what
3 this is all about. I just want you to envision two pulp

4 trucks on this road. Now, I don't know where their spur
5 is or I didn't know about the spur until very recently,
6 when Mr. Rodier -- I read Mr. Rodier's. But we're on the
7 north end right now. We've gone up, we're coming back.
8 On the left-hand side is Frog Pond. That's got perch and
9 pickerel and hornpout, blue herons, and the whole bit.
10 We've got Public Service right-of-way right here
11 [indicating]. Off to the right here is a retired railroad
12 bed that is currently being used for recreation purposes,
13 ATV, snow machines and this sort of thing. And, people
14 actually go from all the way below Gorham, all the way
15 north, up into Success and this sort of thing.

16 Now, I want to back up just a second
17 here. One of the critical things that we need to be
18 cognizant of is the fact that, under this roadway, there
19 are fiberglass sewer lines that are currently being used
20 by Laidlaw. These things are -- you've got a heavy
21 process line underneath. You've got another line that
22 will be used for storm drainage and this sort of thing.
23 We also have a bank of pipes, and I confess I don't know
24 the exact end of it, that are going down to the Fraser

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1 Mill, and Cascade Flats, that will be used to -- that is
2 used right now for transporting water down to them. And,
3 if the Laidlaw Project actually goes through, they will be
4 sending hot water down, and I'm assuming returning.

5 Now, okay, here we go. That's Frog
6 Pond. The kids play there. This road is also being used
7 as recreation and this sort of thing. People walk there,
8 they ride there. The kids go down, they grab their frogs,

9 I guess, or whatever they do. Is that right, Paul?

10 MAYOR GRENIER: Yes.

11 MR. JONES: Yes. Right. And, this is
12 the Public Service of New Hampshire switchyard. This is
13 all part of this. This gives you another -- another focus
14 on what is going on here. And, here we go again. We've
15 got a banking and a dropoff. This is looking at the
16 treatment facility. Back up, you can see there's not a
17 lot of room here.

18 Now, try to imagine running multiple
19 pulp trucks or chip trucks back and forth on that same
20 road, and ask yourself "Are we going to have proper
21 egress? Are we going to be able to address all of the
22 issues associated with safety and everything else with
23 this? Is anything going to be done with this road?"

24 Now, I want to go back, and let's pick
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1 this Google -- we'll pick up this Google map again. If
2 you look, the way this is, when you come across this
3 bridge, very, very narrow in this area here [indicating].
4 It does widen up significantly up here [indicating]. So,
5 you are making -- you're making a -- any kind of a spur
6 that you put in, if you put it off the bridge, then,
7 obviously, you've gotten rid of any obligations to beef up
8 this road. You're talking trucks that are 60 tons apiece
9 that are going to be on this road. And, they're going to
10 be over a fiberglass line. So, this road has got to be
11 done -- done well.

12 Now, stop and think for a moment, if I
13 put a spur in on this road, it means that we're going to

14 have to be able to bring trucks in, from the south,
15 they're going to have to come up in, from the north,
16 they're going to have to cross and they're going to have
17 to go up. When they come out, they're going to have to go
18 down and across an intersection. So, that means at some
19 point here you're going to have to have some sort of a
20 light system or whatever the heck you're going to do. I
21 don't know how you're going to do this. But you're also
22 going to have to get -- you're also going to have to get
23 the spur up, not going to be able to interfere with the
24 ATV/snowmobile trails. And, you're going to have to get

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1 the necessary easements and whatever to ensure that
2 everybody's interests are protected.

3 If I could just have a moment.

4 CHAIRMAN BURACK: We're going to take
5 moment here while he checks his microphone.

6 (Short pause.)

7 CHAIRMAN BURACK: Do you have a
8 particular document you would like to submit?

9 MR. JONES: Yes.

10 CHAIRMAN BURACK: Okay.

11 MR. JONES: Well, what I want to do is
12 hand it around to folks.

13 CHAIRMAN BURACK: That's fine. What
14 we're going to do is we will mark this as "Petitioner's
15 Exhibit 2". And, we will then distribute copies. So, if
16 you provide one copy to Steve here, the stenographer.

17 (Documents distributed by Mr. Iacopino.)

18 CHAIRMAN BURACK: Just a moment, sir.

19 Hold on just a moment. I'm going to restate what I said
20 before. I think what we'll ask you to do, Mr. Jones, is
21 to provide us with both an electronic and a hard copy of
22 the presentation that you just gave, with all the
23 photographs and the map on it. We will mark that as
24 "Petitioner's Exhibit 2". We will mark this document that

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1 you're now circulating here, this OSHA Regional News
2 Release, as "Petitioner's Exhibit 3".

3 (Brief off-the-record discussion between
4 Chairman Burack and the stenographer
5 regarding the marking of exhibits.)
6 (The documents, as described, were
7 herewith marked as Petitioner's
8 Exhibit 2 and Petitioner's Exhibit 3,
9 respectively, for identification.)

10 CHAIRMAN BURACK: Okay. Do you have
11 another exhibit you'd like to share?

12 MR. JONES: Another one to share.

13 CHAIRMAN BURACK: All right. We'll mark
14 this as "Petitioner's Exhibit 4".

15 (The document, as described, was
16 herewith marked as Petitioner's
17 Exhibit 4 for identification.)

18 MR. JONES: CPD's claim that wood supply
19 is the reason for limiting the size to 29 megawatts is not
20 taken as anything other than an attempt to sidestep the
21 SEC process. To underscore that decision -- excuse me.
22 To underscore that their decision was not solely based on
23 wood supply, let me refer you to an article submitted in

24 the January 8, 2010 issue of the Berlin Daily Sun. Hang
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1 on. Okay. At any rate, we -- I don't know if you can see
2 this or -- no, that's not it. Here we go. This is wiped
3 out. "At the Berlin planning board meeting Tuesday, City
4 Councilor Tom McCue said he was upset by the petitions and
5 suggested it was an attempt by supporters of Laidlaw
6 Biomass BioPower -- I'll never get this right -- BioPower
7 biomass project to derail the Clean Power project just as
8 it is moving towards the construction stage." I would
9 offer they don't have any easements at this point to make
10 -- to allow that to be.

11 But "Mr. McCue said he felt Clean Power
12 had done the right thing by sizing the project so it would
13 remain under local jurisdiction. He said the SEC process
14 puts the project under the control of seven politically
15 appointed department heads in Concord."

16 That's what we got for that one.

17 CHAIRMAN BURACK: Mr. Jones, if I may?

18 MR. JONES: You simply have to --

19 CHAIRMAN BURACK: Mr. Jones?

20 MR. JONES: Yes.

21 CHAIRMAN BURACK: May I just interrupt
22 you for a moment. Are you representing to us that this
23 Exhibit 4 is from the Conway Daily Sun?

24 MR. JONES: No, it's from the Berlin
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1 Daily Sun.

2 CHAIRMAN BURACK: From the Berlin Daily
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3 Sun.

4 MR. JONES: Yes.

5 CHAIRMAN BURACK: And, what date, sir?

6 MR. JONES: I believe it's on Page 11.

7 CHAIRMAN BURACK: The date, not the
8 page.

9 MR. JONES: Oh.

10 CHAIRMAN BURACK: The date of
11 publication?

12 MR. JONES: January 8th, 2010.

13 CHAIRMAN BURACK: Thank you, sir.

14 MR. JONES: You simply have to ask
15 yourself, if wood supply were really an issue, why the
16 congratulations?

17 It has been stated on several occasions,
18 including a PUC hearing of November 3rd, 2009, that
19 Concord Steam & Power is not affiliated with CPD. Yet,
20 CPD lists Mr. Bloomfield, President of Concord Steam &
21 Power, as Vice President of CPD. Mr. Bloomfield's
22 involvement with CPD raises some serious concerns. As
23 head of Concord Steam & Power, Mr. Bloomfield is
24 accountable for 73 OSHA violations totaling \$104,200, as

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1 levied by OSHA six months ago, on July 21st, 2009. The
2 following overhead outlines the nature of the fines. I
3 don't believe this is -- I don't believe there's enough
4 resolution here to really -- to really do that. I have
5 submitted throughout copies of this. "Cited conditions
6 include obstructed or unmarked exit access; lack of an
7 alarm system or emergency action plan; inadequately

8 trained and equipped fire brigade; uninspected fire
9 extinguishers; fall hazards; lack of personal protective
10 equipment; deficiencies in the plant's confined space,
11 respirator and lockout/tagout of accidental energization
12 start-up programs; untrained fork truck operators;
13 inadequate chemical hazard communication; numerous
14 instances of unguarded machinery and various [debris]."

15 And -- okay. He goes on here. Let's be
16 sure we focus in on this one. "OSHA defines a" -- they
17 got -- cited one willful violation. "OSHA defines a
18 willful violation as one committed with plain indifference
19 or intentional disregard for employee safety and health.
20 OSHA issues serious" --

21 MR. RODIER: Excuse me.

22 MR. JONES: Excuse me?

23 MR. RODIER: Mr. Chairman, I think this
24 gentleman has been granted great leave by the Committee,
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1 but this is really far afield of what we're here for
2 today, which is whether or not this Committee should take
3 jurisdiction over CPD. I get it. What his point is, is
4 that Mr. Bloomfield runs Concord Steam. Yes, he is a vice
5 president of CPD. But I don't think it's necessary to
6 really go into great detail, given the time constraints
7 here, of what was involved. It's been marked as an
8 exhibit. I'm sorry. Thank you.

9 CHAIRMAN BURACK: Mr. Rodier, thank you.
10 I'm going to allow Mr. Jones to proceed. But, Mr. Jones,
11 Mr. Rodier does make a fair point. You have submitted
12 this document. We have it.

13 MR. JONES: Okay.

14 CHAIRMAN BURACK: We all can read it and
15 take it under consideration.

16 MR. JONES: Let me just read one
17 sentence, if you would, and I'll close off on that. These
18 are not parking tickets. They show a blatant disregard
19 for the health and safety of employees, and raise the
20 question as to how CPD will respect the same for its
21 employees, let alone the surrounding community. That's
22 all I had for that. Okay?

23 CHAIRMAN BURACK: Thank you.

24 MR. JONES: It has been suggested on
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1 several occasions, including the PUC hearing of November
2 3rd, that this project is "shovel-ready". And, by that,
3 we would assume that the scope is finalized, all
4 engineering is complete, permits and easements obtained,
5 financing is set, etcetera. Yet, there is no finalized
6 design for access to the facility, or any of the necessary
7 easements.

8 A definitive project scope has not been
9 publicly presented. Instead, we are still given the
10 typical fluff; suggestions of supplying steam to Fraser,
11 district heating, bio -- biofuel projects, and, of course,
12 my favorite, heating of sidewalks. I've been wanting that
13 for years. We have no knowledge of the overall project
14 size, capital cost, financing, boiler type/size relative
15 to the current/future loads, load demands, and so on and
16 so forth. Is the boiler strictly for power or is there
17 capacity for future loads? Wood requirements power only

18 or -- and, if so, anticipated future needs? Is the site
19 big enough for current/future needs? As I understand it,
20 they have already had to go before the planning board to
21 limit, I believe, see if I got the number right, something
22 like 19 parking spaces.

23 Safety, adequate means of egress, access
24 by emergency response crew? None of the potential

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1 negatives, such as noise and pollution, have been
2 discussed with Gorham residents, even though the town line
3 is within a quarter mile of the facility. These, and
4 other technical issues, would be addressed under the EFSEC
5 review.

6 There is continued mention of the unique
7 environmental design of this facility. Yet, its air
8 permit filings suggest particulate levels of 0.03 pounds
9 per million BTUs, above the 0.02 pounds per million BTU
10 limit needed to qualify it as a "green energy" facility,
11 and hence making it ineligible for renewable energy
12 certificates according to the permit. Without RECs, the
13 viability of this project would be doubtful.

14 It is our understanding that the
15 issuance of a Site Certificate from EFSEC will ensure
16 vetting of all technical, managerial, and financial
17 aspects of this project, and that compliance with said
18 terms and conditions of the certificate would be monitored
19 and enforced on a regular basis.

20 We feel that a primary function of EFSEC
21 is to protect a community from itself. A project of this
22 magnitude is beyond a city council and planning board.

23 The overall viability of this project, as well as its
24 impact on the overall health and welfare of the entire

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1 valley, can only be vetted by unbiased and experienced
2 professionals.

3 Without the requirement of an EFSEC
4 certificate, we have no assurance that any of the
5 aforementioned concerns will be properly addressed and
6 monitored. We are therefore asking that EFSEC give the
7 CPD project proper consideration. On behalf of all of the
8 Petitioners, thank you for the opportunity to share our
9 concerns.

10 CHAIRMAN BURACK: Thank you very much,
11 Mr. Jones. If you would please return to your seat at the
12 front table here. In the next portion of the proceeding,
13 we will invite members of the Committee to ask questions
14 of either Mr. Jones or Mr. Laflamme.

15 Are there questions for these gentlemen?
16 Mr. Below.

17 CMSR. BELOW: Thank you. Good morning,
18 gentlemen.

19 BY CMSR. BELOW:

20 Q. Did either of you participate in the City of Berlin's
21 site plan review by their planning board of this
22 project?

23 A. (Laflamme) No, I haven't. It's very hard for me with
24 the shifts that I was work.

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- 1 A. (Jones) I was working two hours out of town.
- 2 Q. Okay. Just for our familiarity, you mentioned the
3 Mount Carberry site is nearby. That's a landfill site,
4 is that correct?
- 5 A. (Jones) No, no, no. In the photo that you saw with the
6 clarifiers, that was actually the clarifier for the
7 Mount Carberry project.
- 8 Q. What is the Mount Carberry project?
- 9 A. (Jones) That's the local refuse, and they have, you
10 know, they have a drain that goes down to that, that
11 waste treatment facility, if you will. And, their
12 clarifier is right adjacent to that road. That's what
13 you saw.
- 14 Q. Okay.
- 15 A. (Jones) In the last photo, when you were looking back
16 up, and there was a fence, that was -- the system was
17 right there, yes.
- 18 Q. So, the actual landfill site is elsewhere?
- 19 A. (Jones) Oh, yes. It's up on the top, up on the top of
20 the hill, up in the mountains.

21 CMSR. BELOW: Okay. Thank you.

22 MR. JONES: Yes. Yes.

23 CHAIRMAN BURACK: Mr. Scott.

24 DIR. SCOTT: Good morning. I guess for

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- 1 Mr. Jones, if you would, but either one of you, if you
2 could help me out.
- 3 BY DIR. SCOTT:
- 4 Q. One of things, by coming to the Site Evaluation
5 Committee and asking us to take jurisdiction, one of

6 the things we need to look at is, "if we did, what
7 would we add?" And, there's a purpose statement for
8 our enabling legislation, 162-H. But, basically, what
9 I'm curious about is, you had alleged that Gorham
10 residents couldn't participate in the process, the
11 public process, if I understood you right. Is my
12 understanding --

13 A. (Jones) We didn't say we "couldn't".

14 Q. Okay.

15 A. (Jones) We said that "we were not invited or haven't
16 been involved thus far." If you're going to state that
17 you have a project that is "shovel-ready", that means
18 that you're, in my book anyway, that you're good to go.
19 Tomorrow, here you are. It would seem to me that all
20 of this stuff -- I've inquired about this roadway.
21 I've asked people "what's the story with the roadway?"
22 Nobody seemed to know. Why don't we know?

23 Q. But, more specifically, I guess my question is, is the
24 --

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1 A. (Jones) Yes.

2 Q. -- that the public proceedings, were they noticed in
3 the paper and were Gorham residents, did they have a
4 venue to be aware of those?

5 A. (Jones) I'm not -- are you asking me if I'm -- I'm
6 sorry, I'm so hard-of-hearing.

7 Q. I'm sorry. Were the public proceedings, were they
8 publicized in a local paper? Did people have an
9 opportunity to know of these proceedings, to your
10 knowledge?

11 A. (Jones) Well, it's all one common paper. So, yes, I
12 mean, they would be. But I can't tell you that -- I
13 don't know of anything that's been published in the
14 paper. The only party that might be able to tell us
15 would be Barbara Tetreault of the Berlin Daily Sun.
16 I'm going to put her on the spot.

17 CHAIRMAN BURACK: I think we'll -- yes,
18 we're not going to put reporters on the stand here. But I
19 think there may be other opportunities, when we hear from
20 Clean Power Development, for them to explain to us what
21 the public process has been with respect to the
22 proceedings in the City of Berlin on this matter. So,
23 when we get there.

24 Mr. Harrington, and then Commissioner.

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1 MR. HARRINGTON: I'm not sure if this is
2 working. It doesn't appear to be. But most people can
3 hear me anyway, so...

4 BY MR. HARRINGTON:

5 Q. This could be to either of the two gentlemen. As
6 you're probably aware, what the law says is that this
7 Committee is supposed to look at this, when we receive
8 petitions as we have, to see if the Committee
9 determines requires a certificate consistent with the
10 finding and purpose as set forth in RSA 162-H:1, which
11 is the "Declaration of Purpose" of the law.

12 A lot of what you discussed here this
13 morning has to do with, among other issues, but two
14 issues in particular that I have just a question on is,
15 one, the selection of the size, making it the

16 29.5 megawatts, which, according to your newspaper
17 article, was picked, or at least according to this
18 gentleman, McCue, was selected on the purpose of
19 avoiding SEC jurisdiction. And, also, the wood supply
20 issue, saying that, I guess what you're stating is it's
21 Clean Power Development's position that there is only
22 sufficient wood supply to provide their plant with the
23 29.5 megawatts.

24 So, if you could direct me to the
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1 section of 162-H:1 that would -- we should be looking
2 at to show that those are issues of concern for this
3 Committee, because I was having trouble finding it
4 there.

5 A. (Jones) I'm sorry, the question -- I'm sorry. I just
6 --

7 Q. Yes. Again, --

8 A. (Jones) I was listening, but, for some reason, I --

9 Q. Well, I'll try to speak a little louder. Again, the
10 determining factor for this, of whether we should take
11 jurisdiction, is whether the Committee determines the
12 facility requires a certificate consistent with the
13 findings and purposes of RSA 162-H:1. So, looking at
14 that section, I'm trying to find which part of that
15 that you would think that the sizing of the plant to be
16 just below the minimum requirement for SEC jurisdiction
17 and the wood supply issue would be covered by? Because
18 that's been a big part of your presentation this
19 morning.

20 A. (Jones) Well, we made a -- we made a submittal here.

21 The problem is that there's a big disparity between the
22 findings or whatever of Laidlaw and CPD. And, they
23 have made a claim at that PUC hearing that they should
24 be the steward -- there's only room for only one

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1 facility, and they should be the stewards, and they're
2 the right one and this sort of thing. If you look at
3 it on a total planning basis, how can you make a
4 comparison, if one is not coming under the EFSEC
5 jurisdiction and the other one is?

6 Q. And, do you feel somehow the fact that they sized their
7 plant less than 30 megawatts should or shouldn't -- I'm
8 trying to figure out why is that -- why is that an
9 issue as to whether we should assert jurisdiction?

10 A. (Jones) I think there are a lot of citizens that feel
11 they're very suspicious. That, you know, this thing,
12 in the ISO end, it was actually 29.5. The wood supply,
13 I believe, said that they did have enough for 30.

14 MR. HARRINGTON: Okay. Thank you.

15 That's all I had. Thank you, Mr. Chairman.

16 CHAIRMAN BURACK: Commissioner Ignatius.

17 CMSR. IGNATIUS: Thank you.

18 BY CMSR. IGNATIUS:

19 Q. Mr. Jones, you made a reference to the certificates --
20 excuse me, the permits that would make Clean Power
21 Development ineligible for Renewable Energy Credits,
22 RECs.

23 A. (Jones) Uh-huh.

24 Q. And, you went pretty fast through that. So, can you

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- 1 just back up and explain again what it is in the
2 permits --
- 3 A. (Jones) It's my understanding that the particulate
4 levels have to be below 0.02 pounds per million BTUs,
5 is that correct? And, in their air permit, I believe
6 it was 0.03.
- 7 Q. All right. So, we'd need to look at the air permit --
- 8 A. (Jones) Yes.
- 9 Q. -- to confirm what the levels are?
- 10 A. (Jones) Yes. Yes.
- 11 Q. And, you made another comment that was intriguing. You
12 said that "this Committee should be there to protect a
13 community from itself" or something like that.
- 14 A. (Jones) Yes.
- 15 Q. Can you just describe a little more what you mean by
16 that?
- 17 A. (Jones) Well, there's a sense that you have a council
18 and other members of the -- the former council, and
19 other members of the community that are focused on
20 trying to liberate, if you will, the community of the
21 Laidlaw stacks and all this kind of good stuff. And,
22 in the process, I believe that they're looking at CPD
23 as an alternative to Laidlaw. And, the concern that I
24 would have there is that it appears like you will --

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- 1 you may have a tendency to rubber-stamp a little bit
2 more, not necessarily maliciously or deliberately, but,
3 if you really get yourself involved in something, you
4 have a tendency to want -- you have a little bit of

5 ownership in that. And, I think that's a real concern
6 here. That you're not going to be able to look at this
7 thing objectively. And, again, we question whether or
8 not the local -- there's enough local talent there to
9 handle a job big enough. This is an enormous job.

10 We're also asking about the overall
11 viability. If you're going to put all kinds of money
12 into a roadway, that is monies that you're not going to
13 be able to put into the plant or the equipment.

14 It's like having a limited budget when
15 you're building your house. If you're going to put all
16 kinds of money into landscaping or whatever, you're
17 going to end up having to cut back or whatever in order
18 to be able to make your monthly payments.

19 By limiting what you've got from a
20 technical -- you know, an economic sense, it also
21 limits your ability to be able to go into the wood
22 basket and procure wood. Wood is not bought on
23 distance, it's bought on price. So, I don't know how
24 -- I'm not very good at, okay, explaining that, but --

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1 Q. No, that was very, very helpful. Thank you. Just one
2 other question. I know there are representatives from
3 the Town of Berlin here. Are you here in an official
4 capacity on behalf of Gorham?

5 A. (Jones) Oh, heaven's no.

6 Q. Do you know if anyone is here from Gorham or if Gorham
7 has taken any official votes on this issue?

8 A. (Jones) Nope. I don't know of anybody, no.

9 CMSR. IGNATIUS: Thank you.

10 CHAIRMAN BURACK: Mr. Scott.

11 BY DIR. SCOTT:

12 Q. Mr. Jones, addressing your presentation on the road
13 access, we -- the Site Evaluation Committee has a
14 letter from the City of Berlin, where they say that the
15 Planning Board has approved the site plan review, which
16 addresses the traffic situation. Are you asserting
17 that that's not sufficient? I just want to make sure I
18 understand your point.

19 A. (Jones) It's not what?

20 Q. Not sufficient?

21 A. (Jones) I don't know that. I don't know any -- when
22 you've got fiberglass lines underneath, when this thing
23 was running as the pulp mill, they had bore scopes that
24 went down there, and there were rocks down underneath

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1 the fiberglass, because the thing wasn't necessarily
2 laid out properly. Now, this road is designed for just
3 utility vehicles or sludge trucks or whatever; nothing
4 on the order of 60 tons. And, you're talking about --
5 you're talking about something, I don't -- this is what
6 I'm asking here. I don't know what the regulations
7 are, as far as the width of the road, what you have to
8 have for any kind of, what do you call it? Off the
9 side of the road, you know what I mean? Breakdown,
10 right. I'm sorry. That's all. I mean, you know, this
11 is a big project. And, you've got to be able to
12 integrate a spur in this. You've got to decide whether
13 you can do this off the bridge, which is a very acute
14 angle. If you recall, you're coming up, and you're

15 going back like this [indicating]. And, you've got to
16 go over that ATV trail now or what was the railroad
17 tracks. You've got to be able to get up there and
18 you've got to be able to get on it. You've got to be
19 able to take trucks and bring them in from the north
20 and the south, merge them, bring them up, have them go
21 down. Likewise, when they come out, they have got to
22 come out and they're going to go back two ways.

23 Q. Well, maybe I can ask you a different way.

24 A. (Jones) Yes.

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1 Q. Again, we have a letter from the City of Berlin saying
2 that they approved the site plan review for the road,
3 and it would require that it be brought up to standards
4 before they can proceed with the project. Are you
5 aware of the letter or that site plan?

6 A. (Jones) Uh-huh. Yes. I read it. Yes.

7 Q. So, and I don't want to put words in your mouth. So,
8 you're just still unsure of that being sufficient?

9 A. (Jones) I'm not qualified to make that decision.
10 That's why I would put it in the hands of the EFSEC
11 Committee.

12 DIR. SCOTT: Thank you.

13 MR. JONES: Yes.

14 CHAIRMAN BURACK: Other questions for
15 Mr. Jones or Mr. Laflamme from any members of the
16 Committee?

17 (No verbal response)

18 CHAIRMAN BURACK: Seeing none,
19 Mr. Rodier, would you like to ask any questions of either

20 of these gentlemen?

21 MR. RODIER: Sure. Thank you. And, I
22 don't think it will take too long.

23 INTERROGATORIES BY MR. RODIER:

24 Q. First question I have for you, Mr. Jones, are you
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1 absolutely sure of the location of the plant, the CPD
2 plant, that you showed on the --

3 A. (Jones) Yes, I have a fairly good idea of it. I can't
4 tell you exactly where the boundary is in relation to
5 the road, no.

6 Q. Okay. But you're saying, where the letters "CPD"
7 showed on your map, that's where the plant is?

8 A. (Jones) Well, we just gave a rough, I mean, it's a
9 PowerPoint type presentation.

10 Q. Yes.

11 A. (Jones) We haven't gone out and surveyed the thing and
12 had it put down --

13 Q. I understand.

14 A. (Jones) Yes.

15 Q. I thought it was going to be located on, basically, the
16 land they bought from the City of Berlin that was part
17 of or is adjacent to the wastewater treatment plant?

18 A. (Jones) I'm sorry. Where are we going with this? Can
19 you help me?

20 Q. Is it -- Is the CPD plant, to your knowledge, located
21 on property bought, recently purchased from the City of
22 Berlin that's adjacent to the wastewater treatment
23 plant?

24 A. (Jones) It's my understanding it's between the two

1 plants, yes. It's between the Mount Carberry and the
2 CPD plant, yes.
3 Q. Okay.
4 A. (Jones) Yes.
5 Q. It's between them?
6 A. (Jones) Right.
7 Q. Is it next to the wastewater treatment plant?
8 A. (Jones) I don't understand where we're going with this.
9 Q. Okay. Well, then, I will move on. But you're sure?
10 A. (Jones) About what?
11 Q. Of the location that you represented?
12 A. (Jones) I said I have a "vague idea".
13 Q. "Vague idea", okay. Well, that's good.
14 A. (Jones) Does that help?
15 Q. That does help. Thank you.
16 A. (Jones) Yes.
17 Q. Now, I think one of the things I want to ask you about
18 is, do you contest the representation of Clean Power
19 Development that it has obtained all of the necessary
20 permits from the City of Berlin?
21 A. (Jones) No. Permits and easements, and having a
22 project defined, are entirely different things. There
23 isn't a project manager out there worth his salt that
24 isn't going to turn around and tell you that, if you

1 don't have something properly scoped, you are not going
2 to have a good job. And, there's -- I have no

- 3 understanding of what you're actually doing with this
4 project. I have no idea whether you're a straight
5 utility or whether you're trying to send steam to a
6 paper mill or what you're doing. I have no idea.
- 7 Q. Did you ever inquire of CPD?
- 8 A. (Jones) I haven't had any discussions with CPD, no.
- 9 Q. Okay. Did you ever visit their webpage?
- 10 A. (Jones) Yes, I have visited the webpage.
- 11 Q. Okay. Have you read all of the articles in the --
- 12 A. (Jones) I have read the articles.
- 13 Q. Okay. There have been a lot of them, hasn't there?
- 14 A. (Jones) And, I have also read your document, sir.
- 15 Q. Right.
- 16 A. And, if I extract all of the legalese out of it, I know
17 no more about what this project is going to do than I
18 walked in. I'm not trying to be a smart ass here.
- 19 Q. I understand. You read the letter from the City of
20 Berlin?
- 21 A. (Jones) Yes, I read the letter.
- 22 Q. Okay. And, you said you -- you said "we need to know
23 what the story is on the roadway", didn't you?
- 24 A. (Jones) Well, don't you think it would be important to

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- 1 have this thing out in a paper somewhere, so somebody
2 understands.
- 3 Q. Okay. Don't you think the letter from the City of
4 Berlin addresses the roadway?
- 5 A. (Jones) No.
- 6 Q. Did you go in and look --
- 7 A. (Jones) Look, Mr. Rodier, let's understand something.

8 If you're going to turn around and you -- you
9 personally said this in the PUC hearing that this job
10 was "shovel-ready", okay? And, that means everything
11 should be out there to the public. It should not have
12 to go to the city planning board --

13 Q. Okay.

14 A. (Jones) -- to be able to haul this stuff out. I didn't
15 even know, to be quite frank with you, and I had asked
16 a lot of people about this, if they knew where this
17 road was going in? And, no one knew anything about it
18 that I could ascertain.

19 Q. Yes.

20 A. (Jones) And, they turned around, and the only thing I
21 got was when you're document came out and alluded to
22 the fact that there was a spur.

23 Q. So, you were aware of what was going on at City Hall,
24 Berlin City Hall, with respect to the roadway?

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1 A. (Jones) I don't have the details, no.

2 Q. All right.

3 A. (Jones) We are representing people that are concerned
4 about the overall project.

5 Q. Okay.

6 A. (Jones) We want to make sure that both of these plants
7 -- you have made a comment, sir, that there's only room
8 for one plant, and that this is the best, this is the
9 best, obviously, fit for the North Country and this
10 sort of thing. And, I'm saying or we are saying, I
11 should say, that you cannot turn around and compare
12 apples and apples unless you've both been properly

13 vetted.

14 Q. I understand. And, I think your point is, again, you
15 said we have to -- "the community has to be protected
16 from itself", I think that's almost --

17 A. (Jones) Right.

18 Q. You believe that?

19 A. (Jones) Yes, I do.

20 Q. So, basically, what's going on here, you don't have any
21 confidence in the City of Berlin? That's what this
22 comes down to, doesn't it?

23 A. (Jones) Somewhat, yes. I think there are some very
24 biased individuals.

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1 Q. Okay.

2 A. (Jones) And, you know, if you take the Laidlaw Project
3 out of the picture, take your pixie dust, it's gone,
4 you still have to look at a job of this magnitude, sir,
5 and make sure it's there, it's right.

6 Q. I understand. Now, let me move onto another area.
7 And, Commissioner Harrington outlined a couple of
8 issues, and I want to make sure I follow up on that.
9 We've got to talk here a little bit about the selection
10 of the size, about 29 megawatts, 29 and a half
11 megawatts, okay?

12 A. (Jones) Uh-huh.

13 Q. And the wood supply issue.

14 A. (Jones) Uh-huh.

15 Q. Now, would you agree with me there's a relationship
16 between the size of the plant and the amount of
17 available wood to burn in the plant?

18 A. (Jones) I think you have to define what you mean by
19 "available wood".

20 Q. Okay. Just as a theoretical construct, you wouldn't
21 agree that the amount of the wood available would
22 govern the size of the plant that you could build?

23 A. (Jones) Again, you have to define what you mean by
24 "available wood".

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1 Q. Okay. Okay. Would you agree with me that, I think you
2 said correctly, that the CPD used a so-called wood
3 basket of 30 miles?

4 A. (Jones) Uh-huh.

5 Q. Is that correct?

6 A. (Jones) Yes.

7 Q. Okay. Now, would you agree, if you went out 100 miles,
8 that the cost of the wood would get substantially
9 expensive, if you brought it in from 100 miles?

10 A. (Jones) No.

11 Q. No?

12 A. (Jones) Not necessarily.

13 Q. No?

14 A. (Jones) What we were trying to bring out to you before
15 was the fact that a lot of this is tied into trucking.
16 I don't proclaim to be an expert, don't at all. But
17 you've got Schiller down here that is apparently
18 pulling all the way from above us, which is well over
19 three hours away. And, some of these folks are doing
20 it -- some of these folks are making two trips a day.

21 Q. Right.

22 A. (Jones) Now, if they can do that, then what you will

23 end up doing -- what's going to happen, if these
24 facilities, let's say both of these facilities go in,
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1 let's get things -- one thing out on the table, Mike
2 made a statement earlier, we are not trying to
3 undermine CPD, okay?
4 Q. Okay.
5 A. (Jones) That's not the intent.
6 Q. All right.
7 A. (Jones) What we want is we want them on an even playing
8 field, and we want a proper understanding that this is
9 viable. The planning board isn't going to turn around
10 and determine whether this project is viable. If you
11 have a certificate, then you have to adhere to all of
12 the terms and conditions of that certificate. If you
13 don't have a certificate, then anything you say and
14 promise doesn't have to be enforced. You can say that
15 you are only going to go 30 miles out. But, if you
16 don't have a certificate, it doesn't mean you have to.
17 Q. Okay.
18 A. (Jones) Right? Is that fair?
19 Q. I'm asking the questions here.
20 A. (Jones) Okay. All right. Sorry about that.
21 Q. Thank you.
22 A. (Jones) Okay.
23 Q. I understand, though. But here's my point, sir.
24 A. (Jones) Okay.

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1 Q. I'm trying to get to the point that, if you're going to
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- 2 go out 100 miles, instead of 30, there are increased
3 trucking costs, aren't there?
- 4 A. (Jones) Trucking is minor, compared to the other part
5 of it.
- 6 Q. Okay.
- 7 A. (Jones) What is going to happen is that you are going
8 to find that, as the wood folks out there realize that
9 you're a viable entity, Laidlaw is a viable entity,
10 they're going to have stable -- they're going to have a
11 stable outlet for their product, correct?
- 12 Q. Sure.
- 13 A. (Jones) Then, they're going to have -- they're going to
14 have people that are going to be integrated loggers.
15 And, they're going to be able to sell you the biomass,
16 and the lumber companies, --
- 17 Q. Okay.
- 18 A. (Jones) -- their dimensional lumber and this sort of
19 thing. Both of these facilities, if it can be
20 determined that both are viable, add to the stability
21 of the North Country. No question about it.
- 22 Q. Okay. Now, one other thing on the trucking, before I
23 let it go. Are you at all concerned about burning all
24 that diesel fuel and its effect on carbon dioxide

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- 1 emissions?
- 2 A. (Jones) You want me to be honest with you?
- 3 Q. I think I can guess.
- 4 A. (Jones) No. No, I'm not. You know why I'm not?
5 Because I think --
- 6 Q. Look, we've --

7 A. (Jones) Because I think it's one of those things that
8 is just -- it's just one of those lovey-dovey things
9 that you throw out that you can't prove. If you turn
10 around and put a facility up there, then you're going
11 to immediately remove all of this trucking going on
12 with Schiller.

13 Q. Yes.

14 A. (Jones) If you provide jobs up above, you don't have
15 all of these people that are having to have a home
16 remotely, and go back and forth, and this sort of
17 thing. To try to get into a debate on whether or not
18 you're going to be saving biofuel and all that stuff, I
19 leave that to somebody else.

20 Q. Okay.

21 A. (Jones) I'm not equipped to handle that.

22 Q. Okay. All right. I understand. So, one of the things
23 here is, would you agree that a facility, like Clean
24 Power Development, has to, you talked about

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1 "viability", got to be able to sell its power, doesn't
2 it, in order to be viable?

3 A. (Jones) I don't know that.

4 Q. Well, if you build a facility, and you can't sell the
5 output, you're not viable, are you?

6 A. (Jones) Well, Mr. Rodier, let me back you up just a
7 second here.

8 MR. RODIER: Mr. Chairman, we've got a
9 short time here. And, he's been given great leeway, and
10 he's digressed quite a bit. I'd like to have him
11 instructed to try to answer the questions.

12 MR. JONES: Okay. All right. Go ahead.

13 CHAIRMAN BURACK: I'm going to ask him
14 to answer your questions as directly as he can.

15 MR. RODIER: Okay.

16 CHAIRMAN BURACK: But I think we need to
17 recognize that these are not gentlemen who are accustomed
18 to being in a proceeding of this kind. And, we're going
19 to allow them to share their responses.

20 MR. RODIER: Okay. You know, and I
21 agree.

22 CHAIRMAN BURACK: Thank you, sir.

23 MR. RODIER: But I've forgotten my
24 question.

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1 BY MR. RODIER:

2 Q. If you build the plant, you have to be able to sell the
3 output or you're not going to be viable, you're not
4 going to make money, you're going to go out of
5 business. Would you agree with that?

6 A. (Jones) Sounds pretty reasonable.

7 Q. Okay. So, in the judgment of somebody who is going to
8 develop a biomass plant, they have to -- they are
9 making decisions, it's their money that's at stake, on
10 what the cost of fuel is going to be, how they're going
11 to keep down that cost, so that they can sell it to a
12 willing buyer, is that correct?

13 A. (Jones) Seems reasonable.

14 Q. Okay. Now, it might not be the case, if you've got a
15 deal to sell it to somebody that can pass through the
16 cost to ratepayers? For example, you mentioned

17 "Schiller", right?

18 A. (Jones) Uh-huh.

19 Q. Okay. Thank you.

20 MR. RODIER: One moment.

21 (Short pause.)

22 BY MR. RODIER:

23 Q. Now, I want to ask you about Exhibit 1. That was the
24 transcript from DR 09-067 [DE 09-067?]. Do you have a
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1 copy of Exhibit 1 there?

2 A. (Jones) Yes.

3 Q. You had it marked into evidence?

4 A. (Jones) I'm just not used to what the exhibit numbers
5 are.

6 Q. Oh. Okay.

7 A. (Jones) I'm sorry.

8 Q. Let's call it the "transcript", okay?

9 A. (Jones) Right.

10 Q. What was the purpose of putting that into evidence
11 before the Committee?

12 A. (Jones) To indicate that we needed an overall view of
13 what was going on.

14 Q. Okay. All right.

15 A. (Jones) And, that you cannot, once again, compare
16 apples and apples, --

17 Q. Right.

18 A. (Jones) -- without doing a proper vetting of the site.

19 Q. Right.

20 A. (Jones) Now, you can turn around and you can have, you
21 know, engineers come in and design this, that and the

22 other thing.
23 Q. Right.
24 A. (Jones) But, as you just said, if you can't sell it for
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1 the price you need to sell it for, what you want to do
2 is make profit, I would imagine, I'll throw this back
3 at you, okay?

4 Q. All right.
5 A. (Jones) Now, if you could only sell it for this, means
6 you've got to reduce your costs here, capital costs,
7 etcetera, etcetera. And, if you're eating everything
8 up on your capital costs, that means that you cannot
9 turn around and offer enough money to the wood
10 suppliers or whatever to do the job.

11 Q. Right.
12 A. (Jones) All we're saying is that this right here says
13 "we need to look at the whole thing." And, that's
14 really what we're trying to do.

15 Q. I understand.

16 A. (Jones) Okay.

17 Q. And, who's speaking here, did you happen to know that?

18 A. (Jones) I think that was Attorney Bersak, wasn't it?

19 Q. Yes.

20 A. (Jones) That was the --

21 Q. And, he was saying, "you know what, somebody out there
22 ought to petition the SEC to assert jurisdiction of
23 Clean Power Development." Didn't he say that?

24 A. (Jones) Uh-huh. If you're suggesting that's the reason
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- 1 we're here, no.
- 2 Q. Did you ride down today?
- 3 A. (Jones) Huh?
- 4 Q. Did you ride down here today?
- 5 A. (Jones) I drove down, yes.
- 6 Q. Yes. And, who came down with you?
- 7 A. (Jones) Nobody. I drove on my own.
- 8 Q. Oh, you were on your own. Okay.
- 9 A. (Jones) Yes.
- 10 Q. Now, there's actually just one more thing I want to
- 11 ask, and that is the -- with regard to the Berlin Daily
- 12 Sun article of January 8th. This was Tom McCue that is
- 13 quoted, right, as saying that "CPD did the right thing
- 14 by sizing the project at 29 megawatts"? Is that right,
- 15 Tom McCue?
- 16 A. (Jones) Yes. Tom McCue wrote it. I have to rely on --
- 17 Q. Right. But Tom McCue is a Berlin City Councilor, isn't
- 18 he?
- 19 A. (Jones) As I understand it, he's a councilman and a
- 20 planner, and a lawyer.
- 21 Q. But he's got nothing to do with CPD?
- 22 A. (Jones) Well, he's on the Town Council and the Planning
- 23 Board, sure.
- 24 Q. But these words did not come out of CPD's mouth?

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- 1 A. (Jones) No, they did not come out.
- 2 Q. Oh. Okay.
- 3 A. (Jones) No.

4 MR. RODIER: Okay. All right. Thank

5 you.

6 CHAIRMAN BURACK: Thank you, Mr. Rodier.
7 Are there any additional questions at this time from
8 members of the Committee for either Mr. Jones or Mr.
9 Laflamme?

10 (No verbal response)

11 CHAIRMAN BURACK: Okay. Seeing none,
12 what we will do, I have approximately ten minutes of 12:00
13 right now, we will recess this proceeding until 1:00 p.m.
14 We will resume here at 1:00 p.m. Thank you.

15 (Whereupon a lunch recess was taken at
16 11:50 a.m. and the public hearing
17 resumed at 1:05 p.m.)

18 CHAIRMAN BURACK: Ladies and gentlemen,
19 we're just going back on the record here very briefly.
20 I'm going to have a non-meeting under RSA 91-A of the
21 Committee with our legal counsel. And, as soon as that
22 meeting is concluded, which I think will be fairly brief,
23 we will be here to resume the proceedings. Thank you.

24 (Whereupon a recess was taken at 1:05

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1 p.m. and the public hearing resumed at
2 1:30 p.m.)

3 CHAIRMAN BURACK: Good afternoon, ladies
4 and gentlemen. The Committee, having completed its
5 non-meeting pursuant to RSA 91-A with its legal counsel,
6 we will now resume this proceeding with a presentation by
7 Attorney Rodier, on behalf of Clean Power Development.
8 And, if you have witnesses, we probably should have them
9 take their oath right now. If you may, Attorney Rodier.

10 MR. RODIER: Please rise. Mr. Liston,
11 would you state your name for the record, your full name.

12 MR. LISTON: Mel --
13 (Interjection by the court reporter
14 regarding the swearing in of the
15 witnesses.)

16 MR. RODIER: Would you raise your right
17 hand. He's got a good point. Would you please state your
18 full name for the record.

19 MR. LISTON: Melvin Edward Liston.

20 MR. RODIER: I'm sorry, Melvin --

21 MR. LISTON: Edward Liston.

22 MR. RODIER: -- Edward Liston. And,
23 your title is?

24 MR. LISTON: President, Clean Power
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1 Devel opment.

2 MR. RODIER: Okay. Thank you.

3 Mr. Gabler, full name?

4 MR. GABLER: William Wesley Gabler,
5 Project Manager for Clean Power Development.

6 MR. RODIER: Okay. And, looking for
7 separate answers here, do each of you today, in your
8 testimony before the Committee, are you going to tell the
9 full, accurate truth to the Committee, to the best of your
10 information, knowledge and belief?

11 MR. LISTON: Yes.

12 MR. RODIER: Okay.

13 MR. GABLER: Yes.

14 MELVIN E. LISTON, SWORN

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MR. RODIER: You may be seated. Thank you.

CHAIRMAN BURACK: Thank you, gentlemen.

MR. RODIER: Here's what I've got in mind, Mr. Chairman, and we're going to try to be succinct. We put in written comments. We tried to get them in a week ahead of time, which is some indication of the importance that we attach to this. Certainly, we want to be as responsive to this Committee as we can. So, you

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have the written comments. So, I'm just going to summarize the written comments. And, in particular, I want to address a couple of issues of law perhaps, summarize the comments. And, then, we have a few exhibits that we're suggesting that we might want to mark into evidence, we want to do that. And, then, just a brief rebuttal. For example, Mr. Liston wants to, right up front, after I'm done, talk about the size of the facility and how it's interrelated with the available wood. And, Mr. Gabler's the guy in charge of getting all the permits from the local and the state. And, so, he wants to go through those.

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If that's okay, we'll proceed?

CHAIRMAN BURACK: Please proceed.

MR. RODIER: Thank you. If I need the microphone, please let me know. I want to just begin by talking about 162-H here, what the issue is before the Committee. And, here's how I see it, in my own words. It looks to me like there, if you're under 30 megawatts,

20 there is a presumption in your favor that this Committee's
21 jurisdiction or review is not needed. If you're over 30
22 megawatts, there is a presumption that this Committee's
23 review is required. However, and the reason I say
24 "presumption", if you're over 30, because, as the
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1 Committee members know, you can ask for an exemption. So,
2 somebody can with a 40, 50, 60, 70, 80, it doesn't
3 necessarily mean there has to be a hearing. They can
4 persuade the Committee members that it's not necessary to
5 take jurisdiction to achieve the purposes of 162-H. So,
6 you're fighting the presumption if you're over 30. The
7 presumption is at your back, in the case of CPD, if you're
8 under 30.

9 So, for example, we heard today the
10 Petitioners don't have any confidence in how the City of
11 Berlin's handling this. And, I would submit that's not a
12 -- that doesn't really lend itself towards overcoming the
13 presumption that this Committee's jurisdiction is needed.

14 So, and having said that, in brief, I
15 just want to touch on some of the key points here that
16 really go to why I don't believe that this Committee
17 should overturn that presumption in favor of CPD that SEC
18 Committee review is necessary.

19 We've heard, and we will hear, when we
20 do -- we did say in our written comments that CPD has all
21 of the necessary local permits, that includes many from
22 the City of Berlin. Okay. And, that's going to be --
23 Mr. Gabler is going to talk more about that. And, with
24 respect to the state, all of the permits have been

1 received, I think with the reception of the wetlands
2 permit, which is just right around the corner, and maybe
3 will just require CPD to pay some money in mitigation, and
4 Mr. Gabler will address that. So, you've got all of the
5 permits.

6 One of the big reasons for this
7 Committee, typically, when you get an Application for a
8 Certificate of Site and Facility, attached to that
9 Application, the Applicant puts in the applications he's
10 filled out for the state agencies, haven't been submitted
11 yet, and they are dispersed by the Chamber or the
12 Committee to the various state agencies for their review.
13 Here, that's already been done. So, there's probably not
14 much, really, the Committee can add in that area.

15 The 29-megawatt size of the facility,
16 Mr. Liston wants to talk about that. Because that is not,
17 and, certainly, there is a perception, and we can
18 understand how somebody can say "Well, 29 megawatts, isn't
19 that interesting? You know, they would have to come in if
20 it was one megawatt more at 30." But it really does tie
21 back to a wood study that we will mark into evidence that
22 says "the available wood supply will support a plant up to
23 30 megawatts", or it's just a little bit less than
24 30 megawatts, is basically what it says.

1 Now, here is the key thing on the size
2 of the plant, is that there's a judgment call here as to
3 what's the available wood supply, and you heard that

4 today. CPD is only going out 30 miles, basically staying
5 in Coos County. Because the further you go, the wood
6 costs a lot more for the trucking. And, this plant is
7 being positioned as clean, and you have a lot more carbon
8 dioxide emissions if you're trucking wood in from Cheshire
9 County or Merrimack County or Strafford County or Portland
10 or Sherbrooke, Quebec, or Burlington, Vermont, you've got
11 a lot more carbon dioxide to deal with. Now, that's, as
12 we all know, carbon dioxide is not a local thing, it's
13 like a worldwide thing. So that would, for the Commission
14 to value that aspect of this plant, you'd really have to
15 -- that's as big of a picture as you can get, you know,
16 reducing the -- the ultimate beneficiary there is the
17 planet Earth, doing that. But those really are the
18 reasons.

19 And, the key thing here is, why just
20 30 megawatts? It's got those environmental factors, as we
21 said, but, also, it's the cost, you have to keep the cost
22 of your wood down, so that, when you're talking to
23 unregulated purchases, price is key. And, there's no
24 customers to pass that increased cost of wood onto. So,

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1 you've got to keep it very, very close.

2 One of the key, in the legislative
3 findings, one of the key things that this Committee is all
4 about is the site. Making sure facilities are located in
5 the best site available. Well, this site is actually
6 purchased from the City of Berlin, it's a greenfield.
7 Nothing else has ever been there. It's right adjacent to
8 the wastewater treatment plant. And, I understand

9 Mr. Gabler is going to tell you that the Petitioners
10 incorrectly identified the location of the CPD facility
11 this morning, but he will get to that. So, it's located
12 on property, until December 9th, it was the property of
13 the City of Berlin. And, so, it's a great site.

14 A couple good features associated with
15 it. One, it's going to use the effluent from the City of
16 Berlin Wastewater Treatment Plant for its cooling water or
17 makeup water. So, that effluent won't go back into the
18 Androscoggin River. So, that's a benefit. The other
19 benefit that you've heard about is potentially selling
20 steam to the so-called "Fraser mill" right across the
21 river.

22 Now, the site, just so you know, the
23 site is not in downtown Berlin. It's about a couple
24 miles, two and a half miles south of the actual downtown

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1 area in Berlin. And, all that's there now is the
2 wastewater treatment plant, on the same side of CPD. CPD
3 is on their property. The other side of the river is the
4 Fraser mill. Now, when you sell steam to Fraser, a couple
5 of benefits. And, it may not be Fraser, by the way,
6 because, as you know, the mill's for sale. But I think
7 it's okay to say that a bid -- Fraser is trying to find a
8 buyer for the property that will -- that will revive that
9 plant and add to jobs. Big part of the bid package that
10 Fraser has out there trying to get bids is the
11 availability of steam from the Clean Power Development
12 facility.

13 Now, up till now, they have been burning
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14 dirty oil at the Fraser plant to generate that steam. So,
15 if they get to use steam instead from CPD across the
16 river, that's a byproduct of the wood-fired generation,
17 there will be a big environmental improvement there as
18 well.

19 So, in closing, I just want to say that
20 -- a couple of things. I don't think there's any need to
21 second guess the City of Berlin. And, number two, this is
22 a very time-sensitive project, this CPD Project, as the
23 Committee probably knows. There's a lot of federal money
24 and tax incentives and things like that that could expire

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1 at the end of this year. Unless something is done to
2 extend them, they will expire. And, therefore, one of the
3 purposes, as the Committee well knows, is to avoid undue
4 delay. Yes, you want to do your job. But it's also to
5 avoid undue delay in constructing projects. Okay? And,
6 by the way, it goes without saying, this is a renewable
7 energy project. It has favored status. I noticed, by the
8 way, in the Petition submitted by the Petitioners, they
9 said one of their issues is "whether it's consistent with
10 state energy policy." Well, renewable energy is the state
11 energy policy. And, obviously, you can look it up. So,
12 this is renewable, and it has a, you know, enhanced
13 status. Obviously, you know, the rules and laws governing
14 this Committee puts it on a fast track. And, the concern,
15 you know, if there is one, and we fully respect and
16 realize this Committee actually has to do its job, is that
17 we could get some delay here which could impede the
18 start-up date and the -- and the financing.

19 So, at this point, what I'd like to do,
20 if it's okay, I'd like to just address a couple of these
21 questions. We can call it "brief rebuttal testimony" to
22 the members of the panel here?

23 CHAIRMAN BURACK: Please. Please
24 proceed.

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1 REBUTTAL DIRECT EXAMINATION

2 BY MR. RODIER:

3 Q. Mr. Liston, it seems like really the big issue in the
4 room is was the 29 megawatts plucked out of the air to
5 avoid jurisdiction by this Committee or what is the
6 logic and reasoning, the factors that dictated the
7 29 megawatts?
8 A. (Liston) Okay. Obviously, it wasn't just plucked out
9 of the air for any particular reason, that I would like
10 -- that would be applied. When I first started looking
11 to do biomass energy projects in the North Country, I
12 identified two sites. One, you know, I looked at a lot
13 of different places, a lot of them in Berlin, because,
14 obviously, it was the Berlin situation, with massive
15 unemployment, that attracted me up there in the first
16 place. But, anyway, it came to two sites. One is at
17 the sewage treatment plant, where we are. And, it has,
18 really, a significant number of attributes. And, it
19 actually offers the least amount of impact in the area,
20 because of its location, and the most opportunity for
21 synergies and symbiotic relationships with things
22 around it. I also had a piece of property left over
23 from 25 years ago, when I wanted to build a biomass

24 energy plant as Pinetree Power over in Lancaster.

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1 So, at that particular point in time,
2 Clean Power Development used both sites, and went into
3 the ISO-New England process with two 45 megawatt
4 plants. The ISO-New England process is such that, when
5 you're -- in the initial stages of that, you're trying
6 to achieve a couple of different things. One is you
7 are positioning for a study. Okay? They will not
8 study your project until the project is in front of it
9 or haven't been studied or have dropped out. So, you
10 need to get into the so-called "queuing" position. So,
11 you're -- in that study, you're looking to determine,
12 you know, what can be done there, what the
13 interconnection costs are going to be, that sort of
14 thing.

15 But, you really, when you go into that
16 process, whatever you go in at, you have the ability to
17 reduce that size by 60 percent before you get to what's
18 called the "System Impact Study". You go through the
19 Feasibility Study, before you start the System Impact
20 Study, you could reduce that size. So, if you had a
21 100 megawatt proposal, you could drop that down to
22 40 megawatts and stay in the queue.

23 But what you cannot do is increase the
24 size. That's considered as a major significant change,

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1 and it just can't happen. You have to look at

2 everybody else who might be impacted, so on and so
3 forth, because other people are in the queue, then
4 they're basing their studies on what you have. So, you
5 can't make your project bigger. So, the strategy there
6 is, when you position in the queue, you start with as
7 big as you might possibly want to make it, then you
8 start studying all of the -- all of the things that
9 play into deciding what size your plant is going to be.
10 Okay? And, that might have to do with, or even if that
11 particular location works at all, okay, and that has to
12 do with all the variables. Is there sufficient water?
13 What is the traffic and trucking situation? What's the
14 fuel resource area? Obviously, what are the
15 interconnection costs and limitations on the wires, and
16 many, many more things, that go into determining
17 whether the project at that location is feasible or
18 what the ultimate size would be.

19 One of the things that we did is we
20 hired Innovative Natural Resource Solutions, which is
21 a, I think, a very respected company, that looks at
22 things like biomass or wood studies, not only, you
23 know, biomass, but lumber and all kinds of things, all
24 over the Northeast. They're often -- they're the same

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1 company that is often hired by states to do their
2 studies. So, we hired this company, who I had never
3 worked with before, and, you know, and to do this
4 study. And, we basically said we wanted to have a
5 30-mile radius, okay, a study, a 30-mile radius, and we
6 want to determine the amount of biomass that we can

7 have in that 30-mile radius, price-sensitive,
8 obviously, because it's -- you know, and so they made
9 different -- they made different circles, and they
10 actually looked at it further out, I think at 50, 60,
11 you know, they look at different diameters or different
12 radiuses from the plant site.

13 The 30-mile radius is conservative,
14 okay? And, that's what it should be. Okay, because
15 you need to, you know, make sure that you're -- you
16 know, the opposite of "conservative" is "radical",
17 okay, and you're taking a lot of risks there. So, we
18 didn't want to take a lot of risk on our volume of
19 material and our price.

20 The flip-side is, though, generally, in
21 the industry, a 50 megawatt plant is the biggest. Now,
22 if you were in a place where all of the woods in your
23 50-mile radius was working forests, and the roads all
24 were -- led to your location, and there were no hairpin

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1 turns or bad roads or anything like that, and nobody
2 but you were using that wood, you might be able to do
3 50, 50 megawatts, okay, and have reasonable assurances
4 of supply and volume, because it's growing every year
5 annually in the forest. As well as, you know,
6 basically having the wood you need in volume and price.

7 So, we're up in Berlin with a totally
8 different situation. The roads are difficult in the
9 wintertime, and it's mountainous. And, you know, so,
10 30-mile radius is the good radius. Well, when they do
11 their study, you know, it's not all working forests. I

12 mean, the White Mountain National Forest is up in that
13 area. And, even though there's biomass that grows
14 there, there's no assurance that you can use it. You
15 know, there's water bodies and there's other things.
16 So, these people studied the amount of biomass that is
17 growing in that 30-mile radius, and what the existing
18 harvesting of that biomass is.

19 Additionally, you know, there's a
20 connection between biomass and higher-end harvesting.
21 We don't -- we use -- we burn the tops, the limbs and
22 the weed-crop of a higher-end harvest. So, nobody --
23 nobody usually cuts down a lumber tree or a veneer
24 tree. There has to be a market for the higher-end

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1 thing, whether it's pulp wood or lumber, or etcetera,
2 etcetera. So, we burn only the lowest-end component
3 part of that.

4 So, anyway, so I've got two 45 megawatt
5 facilities. And, you know, ultimately, somewhere along
6 the line I realize, because I have this study, that
7 there's only 29 megawatts worth of wood up there, at an
8 affordable price within that radius. So, at that point
9 in time, we made the election to drop the Lancaster
10 project, which was 40 -- 45 megawatts, we dropped that
11 completely, and we downsized the Berlin project to
12 29 megawatts.

13 The 29 megawatts became a combined heat
14 and power plant, because of where we're located and the
15 ability to sell steam, and, therefore, we have a very
16 high efficiency. The parties that we would sell our

17 electricity and our steam to are very sensitive to our
18 fuel cost. And, we have to be able to assure them or
19 make arrangements with them that, you know, we can
20 provide steam and/or electricity at relatively stable
21 prices over time. So, any extreme risk associated with
22 being aggressive about the wood would -- obviously,
23 wouldn't fit into that type of a business arrangement.
24 So, we have, you know, negotiations going on with

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1 entities to buy the power. We also have a memorandum
2 of understanding with Fraser Paper, which, as you know,
3 is now in bankruptcy and going to be sold. We have a,
4 you know, a steam contract that's significantly
5 developed, and the whole issue of wood is a major part
6 of it. And, that is part of the package that Fraser
7 gives to their potential buyers. And, the whole thing,
8 of course, is covered by confidentiality agreements.

9 But, anyway, the sizing of the facility
10 was not to avoid the EFSEC process. When I had the two
11 45 megawatt plants, I fully intended that, you know, if
12 either one of them was to go through that we would be
13 going through the EFSEC process. So, when we dropped
14 down to 29 megawatts, now we have the decision to make:
15 Do we go with the city or do we go with the state? I
16 mean, because we could have brought it to you, we could
17 have asked you to take jurisdiction. And, you know,
18 sometimes developers would do that, especially if they
19 thought they were going to have a really bad time with
20 the city and they had a project they were going to try
21 to force on somebody. Our thing was that we

22 absolutely, positively did not want to do it that way,
23 and we wanted to work with the City. So, we basically
24 put the City in charge and gave -- you know, said "they
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1 have got jurisdiction", we didn't try to get away from
2 that, and we have done our complete permitting process,
3 you know, with the City.

4 And, it's an ongoing thing, because it
5 will be a design/build contract, and there will be
6 things that we will need to go back to them for from
7 time to time. If ever we wanted to change our fuel
8 supply, we would need to go back and ask them. Now,
9 the state law says that we can burn anything that's
10 biomass. But I have already told the City of Berlin,
11 and it's a covenant between us, that we will burn
12 biomass, we will not burn other fuels. So, even though
13 the law on biomass in New Hampshire covers a lot of
14 area, okay, we will not, Clean Power, or anybody who
15 owns that project in the future, will not be allowed to
16 burn anything other than biomass in that plant, unless
17 they go back to the City first. And, if the City then
18 said it was okay, then they would have to go to the Air
19 Resources and the other agency involved. But it's a
20 covenant with the City of Berlin that we're burning
21 wood and nothing else.

22 Q. Mr. Liston, while you're looking at your notes, I just
23 want to submit to the Committee this study prepared for
24 Clean Power Development. It's dated May 2008,

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- 1 Innovative Natural Resources Solutions, LLC. It's
2 entitled "Biomass Fuel Availability". Is this the
3 study you were referring to?
- 4 A. (Liston) Yes.
- 5 Q. Okay. And, I'm just wondering, before I hand it over
6 to the Clerk, Page 39 of 39, if you could just read the
7 top sentence into the record.
- 8 A. (Liston) Okay. "Based upon historic timber harvest
9 figures for Coos County, the net available biomass
10 fuel, combined with a third of traditional pulpwood
11 harvest, can support nearly 30 megawatts of new biomass
12 generation."
- 13 Q. Okay. Thank you. Now, just so the -- one of the other
14 thing I wanted to ask you about this study, Mr. Liston,
15 is what can you tell the Committee briefly about
16 Innovative Natural Resource Solutions, LLC? What are
17 their -- why should the Committee find this credible,
18 if they take a look at it?
- 19 A. (Liston) Well, this is made up of two individuals. One
20 is Charlie Levesque, who is a forester, and a past
21 Director of New Hampshire Timberland Owners, and I
22 believe was a -- for a period of time was the President
23 of the State Forester Association and is on a lot of
24 organizations involving forestry. Another -- the

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- 1 other, there's two principals of that firm. The other
2 one would be Eric Kingsley, who is an economist who was
3 also a past Director of the New Hampshire Timberland
4 Owners. And, you know, so it's basically two
5 individuals, a forester and an economist, who put this

6 together. This study was also further vetted by Sarah
7 Smith of UNH as being, you know, correct and
8 appropriate.

9 There are several other studies,
10 including the land best studies, and there isn't a
11 single study out there that says that this study is
12 incorrect. There are studies that look at how much
13 fuel can be had from a greater distance or how much
14 biomass might be available in the footprint of New
15 Hampshire. You know, people look at it in different
16 ways. But there is nothing out there that anybody else
17 has come up with that says that any part of this study
18 is incorrect.

19 MR. RODIER: Thank you. May I submit
20 this to the Clerk? This has been premarked.

21 CHAIRMAN BURACK: Thank you.

22 MR. RODIER: May I show it to the
23 Chairman?

24 CHAIRMAN BURACK: Please. So, this has
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1 been marked as "Exhibit CPD-1". Thank you.

2 (The document, as described, was
3 herewith marked as Exhibit CPD-1 for
4 identification.)

5 MR. LISTON: And, I do want to talk a
6 little bit more on this.

7 BY MR. RODIER:

8 Q. I was going to say, what else do you have to add to
9 this matter of sizing and wood availability?

10 A. (Liston) Okay. Well, one of the things about the

11 distance thing. We're very, very much in tune, wanting
12 to be environmentally and socially responsible. But,
13 even beyond that, a major component of the revenue that
14 feeds into these facilities is what's called "Renewable
15 Energy Credits". And, here in the ISO-New England or
16 the New England area, there are several different
17 programs. New Hampshire has a program. And, there's
18 programs for existing plants and there's programs for
19 new plants. You know, and perhaps the Massachusetts
20 program is the one that pays the most, and it's also,
21 you know, the largest supply of RECs available. That
22 whole program now is, you know, kind of like up for
23 grabs for a six-month period or so there, re-evaluating
24 who they want to give RECs to and under what

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1 circumstances.

2 And, what it appears is going to be
3 coming out of that is that they want to have the --
4 they want to favor projects that have a better
5 footprint with a smaller radius to draw their fuel
6 from, that they want to have a -- they want to favor
7 projects, perhaps, that are higher efficiency than just
8 straight generation plants. In other words, it would
9 be you would need to be a combined heat and power plant
10 in order to be able to do that.

11 Our facility, if we just generate
12 electricity, would be somewhere around 25 percent
13 efficient. But, by selling steam to an operating
14 Fraser plant, we're going to be like 62 percent
15 efficient. If Fraser is successful and finds a new

16 owner, part of their plan, I think is pretty public
17 now, is that they would put in a whole new line and
18 start producing things like toilet paper and paper
19 towels, and hire another 50 to 75 people. They will be
20 demanding even more steam, which will be running us up
21 to a higher level of efficiency. Our facility is
22 designed not only to be able to meet that extra steam
23 load, but we can work in any arrangement there. In
24 other words, we can sell all electricity or all the

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1 steam they want to have up to our boiler capabilities.
2 So, we're very, very flexible in that respect.

3 The price that we've offered them is
4 significantly below where they're at right now. And,
5 as long as we do not get a major component of diesel
6 fuel in our fuel cost, we will not -- we will not be in
7 trouble, should we have an issue, like with the Middle
8 East, where the price of oil goes through the roof.
9 So, with a 30-mile radius, if we have a massive
10 increase in diesel fuel, it's going to have a minimal
11 effect on our price for steam and our fuel cost.

12 And, to give you an example, if you
13 bring wood from 100 miles away, and, you know, we have
14 models that show this sort of thing, if you bring wood
15 from 100 miles away, and diesel fuel is like \$4.00 a
16 gallon, where it has been that before, before we
17 completed this study, the study was done at \$3.50 a
18 gallon. But, on May 19th of 2008, diesel fuel in
19 Berlin was \$4.61 a gallon. Okay? So, if you -- the
20 difference, if you were at \$4.00 a gallon and bringing

21 diesel fuel in from 100 miles away, roughly half the
22 price of your delivered fuel is going to be tied up in
23 truck transportation and diesel fuel for harvesting and
24 delivery.

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1 When you have the environmentalists
2 getting involved in the issues down in Massachusetts to
3 determine who gets RECs and what's carbon neutral and
4 what's got the best carbon footprint, having a lot of
5 diesel involved in your delivery and your harvest is
6 going to go against you. So, we basically have a
7 facility that is designed to get its fuel locally.

8 Now, if you've seen in the papers, we
9 also have memorandums in place, memorandums of
10 understanding, to, once we get up and operational, to
11 incorporate biodiesel in the operation of the facility,
12 in that our front-end loaders and things that we use on
13 site will be using biodiesel. But we will also be
14 encouraging the truckers who come in to use biodiesel.
15 And, we will have hopefully a depot on site, which will
16 require going back to Berlin and getting more permits
17 for another business to collocate with us. And, that
18 would, once again, reduce the carbon footprint even
19 further for this particular facility.

20 I guess, unless there's questions,
21 that's enough.

22 MR. RODIER: Okay. Well, thank you, for
23 the moment. And, we'd like to get Mr. Gabler out of the
24 way, before we go to questions, if that's all right?

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1 MR. GABLER: Actually, I'm going to
2 stand up, so I can use some of those.

3 MR. RODIER: Do you want the questions
4 or do you just know the answers without the questions?

5 MR. GABLER: Well, I have several issues
6 that I wanted to bring up.

7 MR. RODIER: Okay. Mr. Gabler, I was
8 just kidding. Let me tee this up properly here.

9 BY MR. RODIER:

10 Q. You're Project Manager of this project?

11 A. (Gabler) Correct.

12 Q. Now, there's just a couple of things that I felt I'd
13 like to hear you talk about, by way of brief rebuttal.

14 One of them was the location of the CPD plant. We
15 talked about it this morning. So, I'd like you to do
16 that first, and let me get to the second part here.

17 The second part here is the status of the local and the
18 state permits. Now, you had prepared a compendium on
19 the status of all the state and local permits, didn't
20 you?

21 A. (Gabler) I have.

22 Q. And, you send them to Attorney Iacopino yesterday?

23 A. (Gabler) Yes.

24 Q. And, somehow we didn't bring it today, okay?

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1 A. (Gabler) I can't find the hard copy.

2 Q. Okay. But do you have it -- are you able to sort of
3 just talk from your memory as to the status of the

4 permits?

5 A. (Gabler) Absolutely. Correct.

6 Q. Okay. And, when is the best, earliest time we can
7 submit, well, --

8 CHAIRMAN BURACK: Mr. Rodier, I do, in
9 fact, have a copy here.

10 MR. RODIER: Oh. Okay.

11 CHAIRMAN BURACK: And, these were
12 distributed, we did receive this late yesterday, they were
13 distributed to all the Committee.

14 MR. RODIER: Okay.

15 MR. GABLER: That would be "Exhibit 3".

16 MR. RODIER: So, could we mark it?

17 CHAIRMAN BURACK: Yes, we can.

18 MR. RODIER: And, by the way, so we go
19 in order here, if I might, before we mark that, we've
20 already got a premarked "Exhibit 2" that Mr. Gabler is
21 going to get into. And, this is what, Mr. Gabler?

22 MR. GABLER: That's the site plan for
23 our project in Berlin.

24 MR. RODIER: Okay. So, I'm sure this
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1 will be of interest. And, I'll hand it to you, Mr.
2 Chairman.

3 CHAIRMAN BURACK: Very good. You can
4 set it right here. So, this is a copy of the site plan
5 that also was submitted via e-mail last night to our
6 counsel?

7 MR. RODIER: That's the same.

8 MR. GABLER: Correct.

CPD-0129.txt
CHAIRMAN BURACK: Okay. Thank you.

10 (The documents, as described, were
11 herewith marked as Exhibit CPD-2 and
12 Exhibit CPD-3, respectively, for
13 identification.)

14 MR. RODIER: So, may we proceed?

15 CHAIRMAN BURACK: Please do.

16 BY MR. RODIER:

17 Q. Mr. Gabler, tell us about this, where is the location
18 of the CPD plant? And, I'm asking you to respond to
19 what you've heard this morning from the Petitioners.

20 A. (Gabler) I will. And, I'm sure I can talk loud enough
21 for everybody to hear, so I will go without a mike. My
22 apologies, I will turn this around at some point, but,
23 in order to address the Committee, let me face the
24 picture this direction. Obviously, a Google aerial

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1 view of Berlin, Berlin being up here, to your left,
2 Gorham down to the right, the Fraser Paper Mill visible
3 in this corner, this would be the transmission line,
4 the Coos Loop cut, if you will. And, then, what you
5 can see here [indicating] is what was discussed as the
6 "Burgess Mill wastewater treatment ponds. Here is the
7 City of Berlin Wastewater Treatment Plant [indicating].
8 What was presented to you this morning was that our
9 project would be between the two. That's actually
10 incorrect. Our project will be a horseshoe around the
11 City of Berlin Wastewater Treatment Plant, on
12 11.5 acres, which we purchased from the City on
13 December 21st. Deed was registered with Coos County on

14 December 28th.

15 Boiler and turbine house will be
16 downstream, to the right of the wastewater treatment
17 plant, and wood storage yard upstream, to the north of
18 the existing wastewater treatment plant. So, just to
19 give you that visual as to what we're talking about and
20 where we're talking about being.

21 Questions, before I put this away, or --

22 BY CHAIRMAN BURACK:

23 Q. Do you know approximately where the line is, the town
24 line between Berlin and Gorham?

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1 A. (Gabler) The Berlin/Gorham town line is roughly right
2 there.

3 Q. So, downstream or downriver from the location --

4 A. (Gabler) That's Gorham.

5 Q. -- from the location of the property that you are
6 acquiring?

7 A. (Gabler) Correct.

8 Q. That you have acquired?

9 A. (Gabler) Correct.

10 CHAIRMAN BURACK: Thank you.

11 MR. LISTON: There's the intimacy with
12 the wastewater treatment facility. We're on Route 116 --
13 or, Route 16, right over here [indicating], with the
14 Fraser Paper Mill right about where my head is.

15 MR. GABLER: Yes, we'll get -- Any other
16 questions while we're here? And, just to turn it around,
17 so everybody sees the picture that I held up.

18 CHAIRMAN BURACK: Thank you, Mr. Gabler.

19

20 BY MR. RODIER:

21 Q. Mr. Gabler, before you get into the permits there --

22 A. (Gabler) Well, actually, I was going to come back to
23 the actual site plan, just to cover that for a minute.

24 Q. Very good.

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1 A. (Gabler) This is a larger version of the document, the
2 eight and a half by eleven document you were handed.
3 Just to be clear, the river would be up here
4 [indicating], as we're looking at this picture. Here
5 is the existing wastewater treatment facility
6 [indicating], with their clarifiers and structures.
7 This is currently a snow dump yard for the City of
8 Berlin, would now house the boiler and turbine housing.
9 These [indicating] would be fuel storage silos. Fuel
10 will be dumped, stored for up to 30 days, come across,
11 fuel silos, building, emission control equipment,
12 cooling towers [indicating]. All of this is the site
13 plan that was utilized during the permitting process.
14 Just to make sure everybody's somewhat clear on that.

15 If there are any questions, before I go
16 along? That's just the facts.

17 BY MR. IACOPI NO:

18 Q. That's the actual site plan that was approved by the
19 City of Berlin?

20 A. (Gabler) This is the actual site plan that was approved
21 by the City of Berlin, which I'm going to get into that
22 permitting, because I want to make sure we're all --

23 BY MR. RODIER:

24 Q. Mr. Gabler, I wonder, one question, an issue came up
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1 this morning, the Petitioners said they would really
2 like to know what the story on the road is. So, would
3 that be a useful thing to address at this point?

4 A. (Gabler) That would be. One of the key issues of
5 discussion throughout the hearing, and let me segue
6 back a little bit to describe that our interaction with
7 the City of Berlin Planning Board and Zoning Board
8 started in November 2008. We recognized very early on
9 that we needed to do something because of the trucking
10 route. So, integral into the discussions with both the
11 Zoning and the Planning Boards was a reconstruction of
12 Shelby Street, along with a new interconnection to
13 Unity Street.

14 This is a two-piece drawing that was
15 engineered for us by Golde Engineering, which I will
16 say also does street engineering -- highway engineering
17 for the state. They are a reputable engineering firm
18 to do items of this process. What is proposed is a new
19 -- is an intersection off Shelby Street, a new roadway
20 coming down to our site in these two drawings.

21 And, Mr. Jones referenced the -- I
22 thought it was unfortunate he didn't have a lot of
23 details on that. I can only say it was thoroughly
24 discussed. It's been engineered. Mr. Brillhart is

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1 probably better at analyzing all of these drawings much
2 more than I. But the complete engineering, with

3 cross-sectional views. H. E. Bergeron has been
4 involved. It's been engineered at the highest levels.
5 We've determined that the estimated cost of this
6 construction is \$2.8 million.

7 We have actually had discussions with
8 the City Council of Berlin regarding application for
9 Economic Development Grants to help pay for that. That
10 process has taken place with the North Country --
11 sorry, I just lost the name, but the North Country
12 organization that interacts for those Economic
13 Development Grants. So, we have integrated that amount
14 of money fully into our capital budget, and it's a
15 portion of what we anticipate spending to develop the
16 project in Berlin.

17 So, the issue of the street I think is
18 fully addressed, both from the standpoint of
19 engineering, public participation, analysis,
20 discussion, and budgeting.

21 Q. And, would you be willing to make a copy of that full
22 file available to the Petitioners, if they wanted it?

23 A. (Gabler) I would be happy to.

24 Q. Okay. Are you ready to get into the permits?

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1 A. (Gabler) Yes.

2 Q. Okay. Shall we ask you to give an overview of the
3 local permits first or --

4 A. (Gabler) Yes.

5 Q. Okay. Let's do local, then we'll have you do state.

6 A. (Gabler) The local permits, and, again, as I say, we
7 started almost, you know, 2008 with this process. We

8 went through, and I'm just going to, in not necessarily
9 a chronological order, but a logical order. We met
10 with the Berlin Zoning Board. We requested three
11 variances and one special exception. We had a public
12 hearing on March 11th of 2009, duly noticed, agenda'd
13 and posted. All of those variances were granted, the
14 variances and the exception were granted.

15 MR. IACOPI NO: What was the date?

16 MR. GABLER: March 11th, 2009.

17 CONTINUED BY THE WITNESS:

18 A. (Gabler) In particular, we needed a variance for
19 buildings -- building height, parking spaces, fence
20 height, and the special exception was for allowing a
21 renewable energy facility.

22 I'd like to just address the parking
23 issue, since Mr. Jones brought that up. The reason we
24 requested an exception or variance on that, is the

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1 zoning requirements of the City of Berlin actually are
2 based on requiring parking places per square foot of
3 your structure. As such, that's not really applicable
4 to what we were doing. It would have required 43, if I
5 remember right, would have required 43 spaces. When,
6 in fact, the maximum number of people we would ever
7 have on shift at any one time was 14. So, we requested
8 not to cover that amount of ground with an impervious
9 material, contributing to stormwater run-off, and leave
10 it in its natural state. So, all of those were
11 granted. And, as I say, March 11th.

12 The discussions with the Planning Board
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13 over that site plan that I presented to you actually
14 took period -- took over a number of months of meeting,
15 culminating on March 12th, when the complete site plan
16 review was completed, and approval was granted for the
17 construction, with conditions. Copies of all state
18 permits needed to be provided to the City Planning
19 Department. A final sales agreement between CPD and
20 the City must be in place; that has now been
21 consummated. And, here's one that's notable: If road
22 improvement plans for Shelby Street were to fail for
23 any reason, we would have to go back to the City for a
24 new Planning Board hearing. So, that's written in as a

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1 requirement. That, if we fail to improve and do the
2 upgrade to Shelby Street, along with the new
3 intersection, to keep traffic out of that residential
4 area, then we'll have to go back to the City. The
5 final one being that, if there is a new owner of the
6 plant, a rehearing would be required.

7 Also, on July 7th, 2009, we completed a
8 subdivision process with the City Planning Board to
9 segregate off that 11 and a half acre parcel, and that
10 was completed. We exercised our option to purchase the
11 land. And, as I say, we purchased it in December of
12 last year. That's it. The process with the City has
13 been extensive, and over a long period of time, with
14 much public involvement.

15 BY MR. RODIER:

16 Q. Very good. You want to go on and cover the state?

17 A. (Gabler) I can talk about the state. Application --

18 Air Permit Application was filed March 26, 2009, Permit
19 Number 09-0070. The permit was noticed for public
20 notice on August 19th of 2009. The public comment
21 period closed on September 18th; there were no comments
22 made of any kind, nobody, no comments, public, private
23 or of any sort. Alteration -- And, so, subsequently,
24 the terrain permit -- the temporary permit was issued,
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1 the Temporary Permit-0033, issued on September 25th.
2 Alteration of Terrain Permit was filed
3 with DES on June 16th. I got a file number, but I will
4 go ahead with the fact that they requested additional
5 information on August 3rd; we provided that on
6 August 31st. And, the final permit, AOT-0030, was
7 issued on September 3rd. Of note, as a part of this,
8 we conducted an archeological study. And, I will say
9 that there has been an issue come up, and I'm meeting
10 with Edna -- the Division of Historical Resources on
11 Wednesday, to make sure that that last -- there may be
12 a little bit of an issue we need to discuss there, but
13 she didn't have any hard spot, it's just a clearing on
14 it. I just want to acknowledge that that's one more
15 issue we do need to clear up.

16 State of New Hampshire Shoreland Permit
17 was made on September 24th, acknowledged by the DES,
18 and was judged complete and approved on October 7th.

19 The Wetlands Permit was filed on
20 September 25th, judged administratively complete, and
21 is currently in the administrative review process. In
22 the last month I've met with DES staff three times to

23 just work over the mitigation issue. I tried to find a
24 good, suitable mitigation project that we could

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1 conserve some land in the Berlin area. We haven't been
2 able to. So, what we finally agreed to on Monday,
3 Monday of this week, was that we will agree to pay the
4 alternative compliance payment of \$76,000. And, so, we
5 are now proceeding down that.

6 It is anticipated, there may be a couple
7 more questions coming up with DES, but we anticipate
8 having that permit in hand within the month. That will
9 complete the permitting process with the state, which,
10 as I say, every one of these permits has gone through
11 without any public comment, without any conflict of any
12 kind. We've worked out the issues and all permits have
13 been issued in a timely manner.

14 MR. RODIER: Thank you. The panel of
15 witnesses are available for questions.

16 CHAIRMAN BURACK: Thank you, Attorney
17 Rodier and thank you all. Questions for any of the
18 witnesses or for Attorney Rodier? We'll ask our questions
19 first, and then we will give an opportunity to ask any
20 cross-examination. Mr. Scott.

21 DIR. SCOTT: Good afternoon. I have two
22 questions, actually.

23 BY DIR. SCOTT:

24 Q. But one is, you've alluded to, in your -- Attorney

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1 Rodier's introductions, of potentially selling steam to
2 Fraser. In the documents you gave us, it implied that
3 there is an agreement. Is there or is there not an
4 agreement to sell steam to Fraser?

5 A. (Liston) There is a -- There is a memorandum of
6 understanding, and there is a steam contract that's
7 been negotiated back and forth several times. However,
8 in all probability, the party that we would sign that
9 with now would be the new owner, and it could, in fact,
10 bring out additional negotiations. But all of that is
11 covered by confidentiality. So, we can give you the
12 memorandum of understanding on that, if it's covered by
13 confidentiality. It's not -- what's that?

14 Q. Go ahead. You're doing fine.

15 A. (Liston) Okay.

16 MR. RODIER: So, if we can get a --
17 there's a customary order I think that the Committee
18 issues on confidentiality, who might have access,
19 etcetera. And, we'd be amenable to the usual customary
20 terms. Do we have copies of that with us today? And, we
21 do have it. If you'd like us to mark it and submit it
22 with that understanding, we'll do it.

23 CHAIRMAN BURACK: I think the question
24 really for the Committee is whether we would like to see a

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1 copy of that. If we would, then we would take and we
2 would need a motion to treat it as a confidential
3 document. I think what we would do is, on a motion to
4 accept this and treat it as a confidential document,
5 pursuant to our rules, we would take it as a --

6 MR. RODIER: Okay.

7 CHAIRMAN BURACK: -- as an exhibit, and

8 we'll mark it as "CPD-4".

9 MR. RODIER: Mr. Liston, I'm going to

10 have this marked as an exhibit. And, is this -- I want to

11 make sure that that is it?

12 MR. LISTON: Yes.

13 MR. RODIER: Okay. This is the document

14 Mr. Liston referred to. And, we've got one for the Clerk,

15 and we -- we got four or five for the Committee, one for

16 the Clerk?

17 CHAIRMAN BURACK: That would be fine.

18 And, I think we're going to have a motion.

19 CMSR. BELOW: I'll move that the

20 Committee accept the exhibit as a confidential document.

21 DIR. SCOTT: Second.

22 MR. RODIER: Okay.

23 CHAIRMAN BURACK: There's a motion and a

24 second. Any discussion on that?

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1 (No verbal response)

2 CHAIRMAN BURACK: Okay. All in favor?

3 (Multiple members indicating "aye".)

4 CHAIRMAN BURACK: Opposed?

5 (No verbal response)

6 CHAIRMAN BURACK: Thank you.

7 MR. RODIER: Okay. Can we have it

8 marked?

9 (The document, as described, was

10 herewith marked as Exhibit CPD-4 for

11

CHAIRMAN BURACK: Mr. Scott.

12

13 BY DIR. SCOTT:

13

14 Q. And, again, my second question is, by way of
15 introduction, my question, I suppose, is again, my
16 understanding is, in deciding whether or not the
17 Committee takes jurisdiction, when we look at the
18 "Declaration of Purpose", there's four criteria within
19 there. One of them talks about that there should not
20 be "undue delay in the construction of needed
21 facilities". Again, Attorney Rodier, in your
22 introduction, you implied that us taking jurisdiction,
23 the SEC taking jurisdiction, would have some negative
24 consequences. I guess I'd like to hear more about

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1 that. For instance, if we do not take jurisdiction,
2 what's your -- what's your best guess on when you're
3 going to be moving forward? What's going to happen?
4 And, if we do take jurisdiction, what would happen?
5 A. (Liston) Well, I think I'll try to address some of
6 that, and then maybe Bill will add something to it.
7 But, for one thing, I think we all know what is going
8 on with Fraser Paper Company. And, they have four
9 major component parts of their business operation. One
10 is American labor, which they have a labor contract.
11 And, presently, they compete on the world market to
12 sell, you know, their paper product. Another one is
13 electricity that they consume, and they have a pretty
14 favorable arrangement with Brookfield Asset or
15 Brookfield Hydro to get electricity. Another one is

16 pulp. And, they buy pulp. And, pulp is produced all
17 over the place. And, they can, basically, it's a
18 commodity, and they can -- it's, theoretically, it
19 might be cheaper to buy pulp that came from British
20 Columbia under some scenarios, and it would come into
21 them by train. So, they're able to buy pulp at
22 whatever the best prices are. And, then, their last
23 major component of their business operation is they
24 have to make a lot of steam. And, presently, they make

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1 that steam with oil. It's Number 6 or Bunker C oil.
2 For those of you who know what it is, it's very dirty.
3 And, of course, you, on Air Resources, you know that
4 they're a grandfathered facility, and with all the
5 implications of that. And, one of the things is that
6 they are very, very fragile, should we have a oil
7 spike, as we have historically had some.

8 One of the things that they are trying
9 to do up there, working with the state, is to get,
10 temporarily, is to get a gas line in, so that they
11 could run gas into their existing boilers, and give
12 them some insulation in the event that the price of oil
13 goes up. But, as we all know, gas is also a fossil
14 fuel. And, to some extent, its price sometimes goes up
15 following, you know, the demand for other energy
16 sources. So, I mean, oil could go up and so could gas.
17 And, that's why our ability to provide them with steam,
18 which is somewhat isolated from the price of oil, in
19 that we don't have a lot of oil, in the form of diesel
20 fuel, invested in making that steam, means that we can

21 provide them more stable pricing. Our pricing to them
22 for steam undercuts significantly where they're at
23 right now. And, I believe that it will be a major
24 component of the decision as to whether that facility

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1 continues to operate.

2 But, another piece of that facility, I
3 mean, they have had this, their facility out for bid.
4 And, because it's in bankruptcy, you know, they have to
5 have a junk bid, okay, because the bankruptcy judge is
6 primarily concerned about the creditors, not the
7 employees or anything else. But Fraser definitely, and
8 the people in the management there, would like to save
9 that facility and like it to continue to employ people,
10 and like to have the chance to make the turnaround, and
11 have cheaper operating costs, and bring in another line
12 and be able to be one of the surviving paper mills in
13 the United States.

14 So, not only is our steam contract
15 important to these people that are making that decision
16 as to whether they're going to buy Fraser to run it as
17 a paper mill, but how quickly are we going to produce
18 that steam? When will we be able to do that? Okay?
19 And, so, right now, we're able to tell them when we
20 would, you know, when we would start construction and
21 when we would be making their steam. If we started
22 down this EFSEC process, I don't know that we could
23 tell them when we would have a clear shot to be able
24 to, you know, start construction, because we would have

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1 to complete the EFSEC process now, if it's added on to
2 our existing permit. That's one aspect.

3 Another one, as was mentioned before,
4 was the government Stimulus monies that are available
5 out there. Now, the consensus seems to be that, at the
6 last hour, when this Stimulus money is about to run
7 out, that perhaps, like they have done with many other
8 things, is maybe they will renew it. But, until such
9 time as that happens, you have to assume that the
10 Stimulus Program would run out. The Stimulus Programs
11 that are available to us right, related to a grant of
12 money in lieu of Production Tax Credits or Investment
13 Tax Credits, require that you have a construction
14 start, which has a definition as to what a
15 "construction start" is, that would have to start
16 before the end of this year. Is that correct, Bill?

17 A. (Gabler) Correct.

18 A. (Liston) And, then, the other component part is that we
19 would have to start this plant up before the end of
20 2013. Okay? And, we figure we'd have the 24 to
21 28-month construction period for this new plant from
22 the ground up. There are no used pieces of equipment
23 here, everything is new. And, so, I mean, those are
24 the things that we are dealing with. Now, if we built

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1 this plant, and Fraser went out of business or wasn't
2 there, we still have a generating plant, a 29 megawatt
3 generating plant. And, we're still in business and
4 we're still --we're okay, but we miss the chance to

5 save Fraser.

6 Even if that should happen, okay, as we
7 know, when the Burgess Mill shut down, it really, you
8 know, it has limited things that they can do there.
9 But, if we are across the river with an operating
10 facility that can provide steam and hot water, and even
11 electricity, for that matter, the redevelopment
12 capabilities for those assets on that side of the river
13 in Gorham will be enhanced, so that industries might be
14 willing to move in there and do something with those
15 facilities. So, there's a number of different things
16 that come into play here. But I think time is of the
17 essence, at least for rescuing Fraser.

18 DIR. SCOTT: Follow-up?

19 CHAIRMAN BURACK: Please.

20 BY DIR. SCOTT:

21 Q. So, just -- if I could just clarify. So, if the SEC
22 were not to take jurisdiction, am I correct in
23 understanding that your intention would be to start
24 construction prior to the end of the calendar year?

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1 A. (Liston) That's correct. We anticipate probably June
2 we would be working on the site.

3 DIR. SCOTT: Thank you.

4 CHAIRMAN BURACK: Director Morin.

5 DIR. MORIN: Thank you. Good afternoon.

6 I have two questions.

7 BY DIR. MORIN:

8 Q. One, in your hearings with or meetings with the City of
9 Berlin, to what extent did you give any information

10 relative to the economic viability of the plant,
11 relative in general, or, specifically, in terms of
12 giving commitments for following through on your
13 covenants with the City? Or, did you not have to?
14 A. (Liston) I've offered covenants. There are no formal
15 ones, but I consider them formal, because I've offered
16 them over and over again. Primarily, the covenant of
17 "we will not burn anything other than wood." Okay?
18 Now, I can see how we might want to burn something
19 other than wood in the future. And, it's been in the
20 press, for instance, that, you know, that we are
21 interested in having, you know, not only biodiesel to
22 run in our equipment, but also collocating an algae
23 production facility, collocating, you know, in other
24 words, have a algae production facility that would use

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1 the nutrients from the sewage treatment plant. Our
2 electricity for grow lights, waste heat from the
3 circulating water system, and then sequester the carbon
4 from our stack and grow algae, which would be -- that
5 is the first step. And, you know, we're working on
6 that. But, obviously, you have to have the operating
7 power plant first. This is perhaps one of the -- one
8 of the hottest areas going forward for renewable energy
9 is algae and biodiesel.

10 Then, the next thing after that, once
11 you have that algae, you know, there's a lot of
12 different things you can do with it, and one of them is
13 to create biodiesel. If you create biodiesel, you're
14 left over with fiber. And, if we had that fiber,

15 there's many uses for it. One of them, potentially, is
16 even animal feed. But, if the very -- the use of last
17 resort, or the anchor thing that could anchor that, a
18 market for that fiber, is that we could then burn that
19 in our facility. That would require us to come back to
20 the City of Berlin and say "We want to be able to do
21 this, or maybe we want to run a test run, and, you
22 know, working with Air Resources, to make sure this is
23 okay to do. But we're not even going to go and ask Air
24 Resources for it, unless you tell us it's okay." We

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1 have put the City in front of this thing.

2 We still have to get all of our state
3 permits. But one of the things we did not do is come
4 to the EFSEC Committee and say "Let's do our thing
5 here, so that the City is just an intervenor." We put
6 the City in the driver's seat.

7 Q. Do you want to comment?

8 A. (Gabler) And, just to go back to what I think part of
9 your question was is how we portrayed our economic
10 viability. At every hearing, there has been a question
11 regarding "to whom are we going to sell our power?" and
12 "where are we going to get financing?" Throughout all
13 those meetings, the answer has pretty universally been
14 the same. Given the situation of dealing with
15 utilities, we have opted to or we've been given the
16 paradigm of dealing with out-of-state utilities, and
17 I've always represented that we are dealing with
18 utilities in other states trying to get a purchase
19 power agreement. We continue to be negotiating some of

20 those and we're working towards one. We've also
21 represented that our financing, like anything else, is
22 subject to negotiation, and we're still working on it.
23 We've never characterized it as "falling short" or as a
24 "sure thing". Just that we are working on it. And,

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1 that integral to all of these discussions, whether they
2 be purchase power agreements or financing, those
3 questions are always asking "what's the status of our
4 permits?" So, we are trying to get our permits to the
5 point where the PPA and the financing become more
6 assured, and that's where we are now.

7 Q. And, I have a second question. Relative to the
8 Renewable Energy Certificates and the markets, as I'm
9 sure you realize, that to get New Hampshire RECs, you
10 don't -- you're not required to have a permit that sets
11 that limit, you need to demonstrate that you're
12 reaching the lower limit.

13 A. (Gabler) Yes.

14 Q. Do you have any plans or backup to, if you meet lower
15 emissions than are set in your permit, to have
16 contingencies for New Hampshire RECs?

17 A. (Gabler) The short answer is "yes." We have been
18 negotiating with Wellons, which is a boiler
19 manufacturer in the State of Washington. And, they
20 have been doing the engineering and the design on our
21 particular unit. They have guaranteed us emission
22 specs which will qualify for RECs in all New England
23 states.

24 Q. Regardless of your permit?

1 A. (Gabler) Regardless of the permit, that's what we are
2 moving ahead on.

3 CHAIRMAN BURACK: Other questions?

4 DIR. MORIN: All set.

5 CHAIRMAN BURACK: Questions?

6 Mr. Harrington, and then Mr. Normandeau.

7 MR. HARRINGTON: I guess this is -- it's
8 working now, yes.

9 BY MR. HARRINGTON:

10 Q. I was looking at both the letter signed by Mr. Rodier,
11 and as well as the one submitted by the City of Berlin.
12 Starting with the one signed by Mr. Rodier, because
13 it's kind of a similar question. On Page 7 of that,
14 under Section D, it talks about "Committee jurisdiction
15 over the facility is not needed to ensure that the
16 construction and operation of the facility is treated
17 as a significant aspect of [land] planning in which all
18 environmental, economic, and technical issues are
19 resolved in an integrated fashion." Yet, in reading
20 your caption that comes after that, in Paragraphs 33 to
21 35, there's really no mention of the "economic" and
22 "technical issues", other than that you worked with the
23 "City Manager and the City Planner" and "vetted the
24 initial plans for the project", and that you quote

1 something from the Berlin City Manager here. Were the
2 economic and technical issues, getting back to 162-H:1,

3 where it says "the state" -- "and that the state ensure
4 that the construction and operation of energy
5 facilities is treated as a significant aspect of
6 land-use planning in which all environmental, economic,
7 and technical issues are resolved in an integrated
8 fashion." Could you comment as to how that was done
9 through the, I guess, your process, however it was
10 done?

11 MR. RODIER: Well, that's a great
12 question. Mr. Harrington, we said "it's not needed."
13 Now, this goes back to what I said earlier.

14 MR. HARRINGTON: I'm sorry. Excuse me.
15 I didn't understand what you just said.

16 MR. RODIER: We said "it's not needed."

17 MR. HARRINGTON: What is not needed?

18 MR. RODIER: Committee review is not
19 needed to ensure these things. Your question was "why did
20 we say that?" And, you're asking me to explain --

21 MR. HARRINGTON: Maybe you misunderstood
22 my question then. I'm sorry.

23 MR. RODIER: I'm sorry. Maybe I did.

24 MR. HARRINGTON: What I was trying to

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1 get at was, in your -- on your Page 7, throughout this you
2 list the various criteria that come out of Section 162-H:1
3 as to what the Committee is supposed to use to determine
4 whether a -- we should assert jurisdiction. And, it
5 refers you back -- that the law refers you back to that
6 section.

7 MR. RODIER: Right.

8 MR. HARRINGTON: And, you've gone
9 through each of those sections, and you've said, okay, for
10 example, "Committee jurisdiction... is not needed to ensure
11 full and complete disclosure to the public", and you go on
12 to say how that was met.

13 MR. RODIER: Right. Right.

14 MR. HARRINGTON: So, what I'm just
15 asking, on the bottom of Page 7 of your letter, which is
16 Section D, "Committee jurisdiction is not needed to
17 ensure", and among those other things, "economic and
18 technical issues are resolved in an integrated fashion."
19 Now, when I go to the following paragraphs, you don't
20 address specifically "economic and technical issues". You
21 have a discussion of how you were involved with permitting
22 through Berlin and the City Manager and the statement by
23 the City Manager, but you don't specifically say how those
24 issues were addressed. Maybe it's embedded in there

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1 someplace, and I would ask for more information on that.

2 MR. RODIER: Yes. Okay. And, you know,
3 that's absolutely a good question. And, this goes back
4 to, at the beginning of my comments, when I talked about
5 the structure of 162-H, there's a demarcation point of
6 30 megawatts. The Legislature has said, if you're under
7 30 megawatts, which CPD is, you -- SEC review to get a
8 Certificate of Site and Facility is not required. The
9 presumption is in CPD's favor, unless we have a situation
10 like we do have here today. So, and, by the way, as you
11 know, over 30 megawatts, SEC jurisdiction is not required,
12 if the Committee decides to grant an exemption.

13 So, what I'm saying here, and did we
14 obliquely address, Mr. Harrington, this issue you're
15 raising, economic and technical feasibility, subject to
16 whatever Mr. Gabler wants to add? Yes, we did. Because
17 we think the intent of the Legislature is not to let the
18 rule swallow the exceptions here. If what you were saying
19 is you needed SEC review over every facility between 5 and
20 30 megawatts to ensure economic and technical review,
21 well, you still, in this case, we went out and got all the
22 state and local permits. There would be -- everybody
23 would be required to come in to ensure economic and
24 technical review, okay? So, by and large, we are relying

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1 on the presumption that it's the wisdom of the Legislature
2 not to require that, unless there's a very strong case
3 made, a very strong case made, that somehow there's going
4 to be a problem here with managerial and technical
5 capability. Of course, we've addressed, in the comments,
6 Mr. Liston is not any newcomer to the business. He's been
7 around this track quite a few times with other plants in
8 New Hampshire. He's certainly got the managerial
9 capability and the development capability.

10 As far as the economic, you said the
11 "economic review", we have discussed that here today,
12 where we've said it's imperative to keep, in our view, in
13 our judgment, and in the view of people who are going to
14 put up the money, to keep the wood basket down to 30
15 megawatts --

16 MR. GABLER: Thirty miles.

17 MR. RODIER: The wood basket, 30 miles,

18 to keep the wood basket down to 30 miles, or else the
19 price of the wood goes up to the point to where, if your
20 only market for selling it is to a willing buyer at arm's
21 length, you really have to control those costs of wood.
22 And, there's been a lot of discussion of that today, how
23 that has been probably job number one.

24 So, I would offer that. And,
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1 Mr. Gabler, you've got a couple supplemental comments?

2 MR. GABLER: I was just going to offer
3 what I think might be a more direct answer to your
4 question is, the City Planning Board, like many planning
5 boards, is made up by a diverse group of people. It
6 includes the previous engineer for the Burgess pulp mill
7 project site, a lawyer, they had input from the City and
8 the Regional Economic Development staff. They reviewed
9 all of those aspects using their internal assets, and felt
10 comfortable that they had sufficient on-hand assets to
11 make that determination, except in one area, and that was
12 the wood study area. I've presented our May 8th wood
13 study. They determined that they really didn't have the
14 acumen to analyze that. So, they contracted with UNH to
15 perform -- to vet it for them. That report came back that
16 the study was totally objective and reasonable and fair.

17 So, in terms of an economic and
18 technical aspects, those were accommodated within the
19 framework of the Berlin City Planning Board, with that one
20 exception, and they felt comfortable asking for help in
21 that area, and moved on.

22 MR. HARRINGTON: A follow-up, Mr.

23 Chair man?

24 CHAIRMAN BURACK: Please.

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1 BY MR. HARRINGTON:

2 Q. Just one more thing on this, as far as the financial
3 and economic aspects of this goes then. Would you say
4 it's a fair statement to say that, without a purchase
5 power agreement, this plant will not go forward?

6 A. (Gabler) Correct. And, we've acknowledged that in the
7 past.

8 MR. HARRINGTON: Thank you.

9 CHAIRMAN BURACK: Mr. Normandeau.

10 DIR. NORMANDEAU: Just a couple quick
11 questions.

12 BY DIR. NORMANDEAU:

13 Q. First, as much for my own interest, how would the
14 proposed steam go over to Fraser? Is there a line
15 that's going to be --

16 A. (Liston) Absolutely.

17 Q. -- available to go across the river?

18 A. (Gabler) I'll get the picture, it's easier. As you
19 recall, our project is here [indicating], a horseshoe
20 around the wastewater treatment plant. This is a
21 non-functioning or abandoned railroad bridge, which
22 currently carries pipe across or down to the Fraser
23 Paper Mill. It's a 4,000 foot run from here
24 [indicating], up the bridge, and down to the plant.

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1 We've done the analysis. I've spent days crawling
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2 around the inside of their boiler room. We've
3 ascertained where the interconnection point would be.
4 We'd run a 4,000 foot steam line and a return
5 condensate line in that loop. It's been engineered and
6 -- designed and engineered and ready to go.

7 Q. Thank you. My second question, given the sort of
8 intimate connection, it looks like, with the sewer,
9 existing sewer plant and all, has Berlin asked for any
10 construction bonding whatsoever? So that, for example,
11 that as of the point you break ground, they have some
12 sort of financial guarantees that the project won't get
13 part way in and everybody walks away from it?

14 A. (Liston) Well, we are -- Berlin hasn't asked for it
15 specifically, to my memory. But we are anticipating
16 that it would be a bonded project, design/build/turnkey
17 bonded project, that would, you know, have guarantees
18 for performance, schedule, price, everything. And,
19 we're working with five contractors right now to try to
20 determine who would be doing that.

21 DIR. NORMANDEAU: Thank you.

22 CHAIRMAN BURACK: Questions? Ms.
23 Muzzey.

24 BY DIR. MUZZEY:

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1 Q. Earlier you talked about the roadway improvements
2 leading to your plant. Are they pictured on this 2008
3 site plan?

4 A. (Gabler) No, they are not. Those improvements would be
5 far to the north of where that site plan is, on the
6 road.

- 7 Q. So, those improvements were not part of the public
8 process when this site plan was approved?
- 9 A. (Gabler) They were a part of the public process. So,
10 that's what I was just saying, is that they were an
11 integral part of the discussion. In fact, when that
12 site plan was approved, it was incumbent that those
13 proposed modifications would be done. And, if they're
14 not done, then we would have to go back to the City for
15 a new site plan review. So, that's -- it was an
16 integral part of the discussion, both with the Zoning
17 and the Planning Board.
- 18 Q. So, the public was given the opportunity to speak to
19 the roadway improvements during the hearings?
- 20 A. (Gabler) Absolutely. At both public hearings, those
21 plans I just showed you were presented, we talked and
22 discussed them at length. There were some questions.
23 In fact, we talked about the fiberglass pipelines that
24 were running underneath. And, H.E. Bergeron and the

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1 other engineers are aware of that, and are just going
2 to have to make sure that when the actual roadwork
3 takes place that that's -- that is addressed and
4 accounted for. Yes, that was all discussed.

5 DIR. MUZZEY: Okay.

6 CHAIRMAN BURACK: Mr. Below.

7 CMSR. BELOW: Thank you.

8 BY CMSR. BELOW:

- 9 Q. Along the line -- those lines, are those plans for the
10 roadway improvements, I take it that that's the
11 connection from Unity Street to Shelby Street?

- 12 A. (Gabler) Correct.
- 13 Q. And, they're on -- are they on public file at the City
14 of Berlin somewhere?
- 15 A. (Gabler) I'm sure the City of Berlin has a copy
16 somewhere. I could not tell you where it is.
- 17 Q. Okay.
- 18 A. (Gabler) But, yes.
- 19 MR. IACOPI NO: Did you submit them as
20 part of your site plan review process?
- 21 MR. GABLER: Yes.
- 22 MR. IACOPI NO: So, it would be in the
23 site plan file.
- 24 BY CMSR. BELOW:

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- 1 Q. And, are those -- do they involve the need to acquire
2 any private rights-of-way or are they in the public
3 rights-of-way?
- 4 A. (Gabler) There are four easements required. And, I'm
5 stuttering while I look for that.
- 6 CHAIRMAN BURACK: Take your time.
- 7 CONTINUED BY THE WITNESS:
- 8 A. (Gabler) There are four easements required from the
9 City of Berlin and from PSNH and Brookfield Hydro. I
10 can't remember the fourth right now. I will tell you
11 when I find the sheet. But what we did was we wrote
12 into our budget acquiring those easements at the rate
13 of \$10,000 per acre, which was -- I was appraised was
14 the DOT standard for easements of that variety, and
15 that is budgeted in our account.
- 16 BY CMSR. BELOW:

17 Q. And, could you show us on that aerial view you have of
18 the approximate location of where that connection would
19 occur?

20 A. (Gabler) Yes. You know, it's -- this is the existing
21 bridge, coming across unity street. And, somewhere
22 right in here [indicating], sorry, would be a stoplight
23 intersection, with a turning lane, and would connect
24 into Shelby Street, and allow the trucks to come down

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1 the remaining distance.

2 Q. So, in doing that, is the effect of that that the
3 trucks avoid going through any of the residential --

4 A. (Gabler) Absolutely. Correct.

5 Q. Once they have crossed the river?

6 A. (Gabler) Once they come across this river, or, if
7 they're coming down from the north, they're coming down
8 a main road, it's a truck-approved route. And, I think
9 it's important to note that the City of Berlin, in the
10 last year, had a new truck route approval, and that
11 this all conforms with the City zoning for truck
12 routes. So, approximately here [indicating] would be
13 the interconnection, as I say, stoplight intersection,
14 with turning lanes, so that the trucks could slow and
15 turn and have the proper turning radius to then come
16 back to the plant.

17 Q. And, it's in that vicinity where all of the easements
18 have to be acquired?

19 A. (Gabler) Actually, --

20 Q. Or, are some of the easements related to the pipeline
21 crossing?

22 A. (Gabler) Actually, the easements are for the entire
23 route, because, in our research of this, we found out
24 that this is not really an approved road and has no
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1 City right-of-way. It's sitting on privately-owned,
2 fee simple land. The City has no jurisdiction over it.
3 So, we found that in doing our research. And, now, we
4 would have to acquire easements the entire route to
5 upgrade it to City standards.

6 Q. So, Shelby Street essentially terminates now at the
7 wastewater treatment plant, is that correct?

8 A. (Gabler) Absolutely. Yes, that's the end of it.

9 Q. And, between the wastewater treatment plant and where
10 the intersection would occur, what else is located
11 along Shelby Street, just the Carberry related water
12 treatment?

13 A. (Gabler) There's the defunct or the closed water
14 treatment facility, which is gated and barred. There's
15 a hydro facility, which is unmanned, but has occasional
16 visitation.

17 CHAIRMAN BURACK: And, who's the owner
18 of that hydro facility there?

19 MR. GABLER: Brookfield Asset
20 Management, Brookfield Hydro.

21 BY CMSR. BELOW:

22 Q. And, that's where the easement gets involved with them,
23 basically?

24 A. (Gabler) Correct. Actually, Brookfield owns a large
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- 1 portion of this all the way back here [indicating],
2 PSNH owns some right here [indicating], the City we
3 would have to do here [indicating], and I think it
4 might be Mount Carberry for in here [indicating].
- 5 Q. So, in doing that, you have to acquire those easements
6 to upgrade the length of Shelby Street to the site?
- 7 A. (Gabler) Correct.
- 8 Q. And, would that then be turned over to the City of
9 Berlin?
- 10 A. (Gabler) It would be designed and constructed to City
11 standards and turned over to the City of Berlin upon
12 completion.
- 13 Q. Even though they're really one of the principal users
14 of it presently or perhaps the principal user of it
15 today for the facility?
- 16 A. (Gabler) Correct. Its current almost sole use is the
17 wastewater treatment facility.
- 18 CMSR. BELOW: Okay. Thank you.
- 19 CONTINUED BY THE WITNESS:
- 20 A. (Gabler) But it turns out technically as a "trail".
- 21 CMSR. BELOW: Okay.
- 22 CHAIRMAN BURACK: If I may follow up
23 from there.
- 24 BY CHAIRMAN BURACK:

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- 1 Q. What's the status of your efforts to acquire those
2 easements?
- 3 A. (Gabler) We have not yet started. So, I had a very
4 preliminary discussion with Brookfield, and they said

5 "not a problem". But I have not pursued beyond to the
6 other parties at this point.

7 Q. Thank you. Well, if I may, while we're on the subject
8 of vehicular traffic, could you address the type of
9 trucks or other vehicles that would, in fact, be using
10 this roadway, and the size and the weight? We heard
11 this morning an indication that these would be "60 ton
12 vehicles hauling logs". Can you provide some clarity
13 on how many vehicles, what size, what they would be
14 carrying?

15 A. (Gabler) The design of the facility is 46 trucks per
16 day, six days -- five days a week. And, as to weight,
17 they would each have, at maximum, a 30 ton load of
18 chips. The weight of the truck is going to vary. I
19 would not say that "60 tons" is incorrect, but I would
20 say it's at the outer limit of reasonable possibility.
21 So, there will be 46 trucks a day during the week,
22 weekdays. There will be, obviously, staff vehicles
23 going back and forth, and occasional deliveries, as
24 well as routine, probably once to twice a week, pick up

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1 of ash for dispersal into farmlands as fertilizer.

2 CHAIRMAN BURACK: Thank you.

3 Mr. Harrington.

4 BY CMSR. BELOW:

5 Q. Just along those lines, would you only be receiving
6 chipped wood or will you have the ability to chip wood
7 on site?

8 A. (Gabler) We would not chip wood on site. So, we would
9 be receiving chips.

10 Q. So, it would mostly come in semi-trailers?
11 A. (Gabler) And, semi-box -- 30 ton box trailers, which
12 will then be hydraulically lifted in the air and dumped
13 out.

14 CMSR. BELOW: Thank you.

15 CHAIRMAN BURACK: Mr. Harrington.

16 BY MR. HARRINGTON:

17 Q. Well, while we're on the subject of trucks, I guess
18 I'll stay there just for a second. This whole
19 discussion of the 46 trucks a day and the size and all
20 that, I assume that was completely vetted with the City
21 of Berlin then?

22 A. (Gabler) Absolutely.

23 Q. Okay. And, they approved this usage?

24 A. (Gabler) Yes.

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1 Q. Okay. Going back to something that Mr. -- this was
2 said earlier, I think a follow-up question, it had to
3 do with, I think I got it right here, if the Fraser
4 facility were to close, that you would still keep on
5 going on. So, is your turbine and generator set
6 capable of putting out the full 29 megawatts electric,
7 if indeed you didn't sell process steam?

8 A. (Liston) Yes. We have a brand-new Shin Nippon 29
9 megawatt automatic extraction turbine, as opposed to a
10 condensing extraction turbine. And, so, if we have no
11 steam customer, our net output will be like 27
12 megawatts. And, if -- it will run efficiently at that
13 mode, we'll have a really good turndown ratio. When,
14 normally, when Fraser, at today's production level,

15 with their normal operation, we're going to have
16 somewhere around 17 megawatts of electricity to sell
17 and put on the grid normally.

18 Q. So, it could, I don't know if this is the correct term,
19 in a way load-follow, as the demand for steam --

20 A. (Liston) Our approach is that we are load-following.
21 (Multiple people speaking at the same
22 time.)

23 BY MR. HARRINGTON:

24 Q. It could, in effect, load-follow, as the demand for
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1 steam in Fraser went up and down?

2 A. (Liston) Yes. Our primary customer is the steam
3 customer.

4 MR. HARRINGTON: Thank you.

5 CHAIRMAN BURACK: Other questions? Ms.
6 Ignatius.

7 BY CMSR. IGNATIUS:

8 Q. Mr. Gabler or Mr. Liston, either who knows the answer
9 to this, have there been any formal or informal
10 discussions with the Town of Gorham about the project?

11 A. (Gabler) Yes, there have been. I have had multiple
12 meetings with the Town Manager, Bill Jackson, and have
13 appraised him at each -- at steps as we've gone along.
14 I've offered to meet with the City of Gorham -- or, the
15 Town of Gorham, select board, etcetera, and he has said
16 that that was probably not necessary, that he would
17 inform them and pass on the information. So, there
18 have been meetings with the Town of Gorham, but they
19 have been limited to the City Manager -- or, the Town

20 Manager.

21 Q. And, there are no requirements for any permits to be
22 obtained from Gorham?

23 A. (Gabler) No, there is no requirement. But we, however,
24 kept them informed as good neighbors.

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1 Q. Have you had discussions with the North Country
2 Regional Planning Commission?

3 A. (Gabler) Multiple discussions with North Country
4 Council -- Regional Planning Commission. Jeff Hayes is
5 an integral part of the discussions, as is Mike. So,
6 yes.

7 Q. And, have they -- has the Regional Planning Commission
8 taken any action, expressed any concerns, filed any
9 letters in any of the hearings that you've been a part
10 of?

11 A. (Gabler) The only action they have taken has all been
12 affirmative and positive, looking for ways to assist us
13 and to support our efforts.

14 Q. Do you know if your, I think, from describing the road
15 not even being an official road within Berlin, I guess
16 I know the answer now that I didn't before, is there
17 any state review of the improvements to that road
18 that's required?

19 A. (Gabler) Oh, there would be. Yes.

20 Q. So, --

21 A. (Gabler) Because of the intersection at --

22 Q. Okay. So, the State Department of Transportation at
23 some point has --

24 A. (Gabler) Yes.

1 Q. -- or will be --

2 A. (Gabler) Will.

3 Q. -- scrutinizing those?

4 A. (Gabler) Will be, yes.

5 Q. Do you know, is there an application filed? Is there
6 any formal process, a permit that's received? Anything
7 to help explain what that review involves?

8 A. (Gabler) I know of no permit, and perhaps Mr. Brillhart
9 would correct me, but I know of no permit or no
10 process, other than, when we got a little closer, I was
11 going to sit down with him and discuss where we are and
12 where we're going with it.

13 CMSR. IGNATIUS: Okay. Thank you.

14 CONTINUED BY THE WITNESS:

15 A. (Gabler) But, to this point, we've had it engineered
16 and are moving ahead.

17 CHAIRMAN BURACK: Mr. Getz.

18 BY VICE CHAIRMAN GETZ:

19 Q. I've got a question for Mr. Gabler, I believe. I'd
20 like to hear a little more about the -- I think you
21 spoke to a special exemption from the ZBA for a
22 renewable energy facility. So, I assume there was some
23 kind of zoning of this area that didn't anticipate
24 that. Could you just explain what the rule was and

1 what the exception involved and what was the, I guess,
2 the standard that the ZBA had to look at?

3 A. (Gabler) And, I will give you a cursory explanation,

4 and acknowledge that the City Planner is sitting behind
5 me and will give you a much better answer. In 2009 --
6 no, 2008, the City passed a special zoning regarding
7 renewable energy facilities over which they had
8 cognizance. And, it laid down a certain number of
9 criteria, and I'm sorry I don't have it in front of me,
10 I can't enumerate what they are, but a number of
11 criteria, that any renewable energy facility under 30
12 megawatts seeking to build in the City of Berlin needed
13 to meet those criteria, needed to come before the
14 Zoning Board for a special exception. And, we
15 addressed all of those issues at a public hearing and
16 were granted that exception.

17 Q. Do you have any documents on that in your filing
18 anywhere? Have we seen the application you made or the
19 --

20 A. (Gabler) There was no application. It was in the
21 meeting minutes, minutes of the meeting of the Zoning
22 Board on March 11th.

23 VICE CHAIRMAN GETZ: Thank you.

24 ASST. CMSR. BRILLHART: I have a
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1 question.

2 CHAIRMAN BURACK: Mr. Brillhart, and
3 then Mr. Simpkins.

4 BY ASST. CMSR. BRILLHART:

5 Q. Bill, is Unity Road a state highway, do you know?

6 A. (Gabler) It is.

7 Q. It is a state highway. And, the bridge over the river,
8 is that a state bridge?

9 A. (Gabler) Yes.
10 CHAIRMAN BURACK: Any further questions?
11 Thank you. Mr. Simpkins.
12 DIR. SIMPKINS: Yes, I had a question
13 for Mr. Gabler.
14 BY DIR. SIMPKINS:
15 Q. You had mentioned earlier that UNH was contacted by the
16 City of Berlin to critique the Wood Availability Study
17 --
18 A. (Gabler) Correct.
19 Q. -- done by INRS. Do you happen to have a copy of what
20 UNH's report was? You submitted a copy of the one INRS
21 did as an exhibit, but do you have the one that UNH
22 did?
23 A. (Gabler) I've got one in my box somewhere, it will
24 probably take me a few minutes to find it.

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1 Q. Okay.
2 A. (Gabler) It's a two-page letter from Ms. Smith --
3 Q. Okay, Sarah Smith?
4 A. (Gabler) Sarah, saying that it was a good study.
5 Q. Okay.
6 MR. GABLER: But I will, I can get you a
7 copy of that.
8 DIR. SIMPKINS: Okay. Thank you.
9 CHAIRMAN BURACK: Any other questions?
10 (No verbal response)
11 CHAIRMAN BURACK: There have been
12 references to a number of documents here that I think it
13 would be helpful for us to see, and be helpful, if you

14 would, Mr. Rodier, after today, promptly submit those.
15 And, we'll reserve exhibit, you know, exhibits numbers for
16 those. But I think it would be helpful for us to receive
17 copies of the minutes of both the ZBA and the Planning
18 Board hearings, as well as the document that Mr. Simpkins
19 questioned, referenced, the letter from Ms. Smith from
20 UNH. And, there may be some other documents as well that
21 have been -- that have come up earlier in our questioning,
22 and I think it may also be helpful for you to submit for
23 the record and for the Committee review.

24 Are there other questions from other
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1 Committee members at this point?

2 (No verbal response)

3 MR. RODIER: Mr. Chairman, do we want to
4 mark this, the multiple documents that you just enumerated
5 with an exhibit number or do we just --

6 CHAIRMAN BURACK: Well, if you have them
7 here right now, we can mark them with specific exhibit
8 numbers. If it's going to take you a little while to find
9 them, we can mark them at a break and then come back and,
10 for the record, --

11 MR. RODIER: All right. Okay.

12 CHAIRMAN BURACK: -- determine where,
13 you know, just announce how they have been numbered.

14 MR. RODIER: I just wanted to mention, I
15 have one more, I want to address an interpretation of the
16 legal issue here real quick that's come up, if I may, at
17 some appropriate point?

18 CHAIRMAN BURACK: Sure. We certainly
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19 can do that. I have a few questions --

20 MR. RODIER: Okay.

21 CHAIRMAN BURACK: -- that I'd like to
22 get through as well.

23 MR. RODIER: Yes. Good.

24 CHAIRMAN BURACK: And, this may spark
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1 some other questions from others also. Bear with me here.

2 BY CHAIRMAN BURACK:

3 Q. We saw on the plan the location of the Coos Loop or the
4 transmission line. We have not heard any discussion,
5 or at least not any length, of where this project is
6 with respect to transmission issues and access to the
7 transmission lines. And, it would be very helpful if
8 you could address for us what that status is at this
9 time.

10 A. (Liston) The feasibility study, which is the first
11 phase that we went under, was completed, and there was
12 no issues as far as connecting. There was some
13 preliminary estimates of the connection cost. Then, in
14 the ISO process, you move into what's called the
15 "system impact study", which we are somewhere between
16 one and two-thirds complete. I just sent the second of
17 three payments in for that today. And, the system
18 impact study looks further down the road or further
19 along the system, to see whether we impact something
20 beyond the Coos Loop, and there's something that might
21 need to be upgraded or that kind of thing. And, once
22 we do that, the system impact study, we will have a
23 really good handle on any contingent risk, capital risk

24 that's related to the upgrading of either the Public
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1 Service assets or assets further down the road, which
2 may be Public Service's or somebody else's.

3 Then, there's an interconnection
4 agreement process that you go through, which can be
5 done while you're under construction, and would need to
6 be completed before you actually started putting
7 electrons on the line. But that's something that would
8 take place during the construction period.

9 Q. And, what do you anticipate would be the time frame for
10 getting through this process?

11 A. (Liston) One of the problems you have with all of these
12 things is that none of the parties that do this give
13 you an estimate, okay, and it is somewhat out of our
14 control. So, they give you "guesstimates", I'll call
15 them, better than estimates, on how much they're going
16 to charge you for it. But, when they actually get it
17 done is, you know, pretty wild.

18 Q. Are you in a position to tell us whether this is a
19 period of a few months, many months, a year, multiple
20 years?

21 A. (Liston) Well, we're making the second payment for, you
22 know, supposedly two-thirds through the system impact
23 study. So, I would expect that we would, maybe within
24 the next two to three months, have the results of the

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1 system impact study.

- 2 Q. Thank you. And, did I understand correctly earlier,
3 Mr. Rodier, that this project would not go forward,
4 would not be built, unless you had both a purchase
5 power agreement and financing arranged? Is that a fair
6 statement?
- 7 A. (Liston) That's a 90 percent fair statement, in that
8 it's up to ultimate lenders whether they want to take
9 some risk as to whether the ultimate purchase power
10 agreement, you know, is the terms. I mean, it's
11 possible that you could start a project under
12 construction when you are significantly negotiating
13 with somebody, and they -- and all the out-of-state
14 utilities, for instance, if they agree to give you a
15 purchase power agreement, it still remains subject to
16 approval of their thing like their Public Utilities
17 Commission, which are different in each state. So,
18 that would be a decision point as to whether you waited
19 for that process to be absolutely completed or whether
20 you felt that the risk was small enough to where you
21 could start construction or start engineering or start
22 some of the things that are involved in the
23 construction phase.
- 24 Q. I'm just trying to determine to what extent either of
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- 1 these is an absolute precondition for you being able to
2 move forward?
- 3 A. (Liston) We will ultimately have to have somebody that
4 buys the power, okay? But, even whether you need a
5 complete customer, for instance, if we had customers
6 sufficient for most of the power, then there's -- then

7 we could always sell electricity to the grid. We could
8 sell electricity, you know, basically to ISO-New
9 England. And, the rates there are going up and are
10 starting to look better. It's projected that it might
11 be seven, seven and a half cents by this time next
12 year. So, that would work for us.

13 Q. Thank you.

14 A. (Liston) Along with RECs.

15 Q. So, is the availability of RECs, your ability to get
16 RECs for this project, is that also effectively a
17 precondition for this to be financially viable?

18 A. (Liston) Capital cost is a precondition, permits are a
19 precondition. RECs, interpretation of the risk-takers,
20 as to the amount that you would get paid for RECs and
21 capacity payments, and whether the political risk of
22 whether those RECs are going to change or anything,
23 there's many, many risk factors here. Okay? And, like
24 I said, the preferred REC in New England is the

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1 Massachusetts REC, but that whole market is in turmoil
2 right at the moment, as far as new projects going
3 forward. But -- because of biomass, for biomass
4 projects, not necessarily for all projects. But, for
5 biomass projects, as they look at it and decide, you
6 know, what kind of biomass projects they want to
7 encourage. I'm sure some of you know exactly what's
8 going on down in Massachusetts in that regard.

9 Q. Thank you. I want to move on to the issue of air
10 quality here. Have you put together any kind of a
11 comparison of emissions from the facility at Fraser

12 Paper, and, if this were to provide steam for the
13 Fraser Paper facility at its current rates of usage,
14 how the emissions profile overall would change?
15 A. (Liston) Well, you know, we have an environmental
16 engineer that deals with this in great detail. But, as
17 I said, they burn Bunker C oil. So, their air
18 emissions profile is not very good, but it's
19 grandfathered. And, to the extent that they don't have
20 to burn that, because we provide their steam, our
21 profile will be significantly better than that. One of
22 the things that will be missing will be sulfur dioxide,
23 because we won't be producing that. So, it will just
24 be a very good improvement. The actual numbers and

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1 things, that we'd have to get back to you on it. We do
2 have that, but I don't think we have it today.
3 A. (Gabler) They're currently burning between 9 and
4 10 million gallons of oil annually. We haven't --
5 don't have the quantitative numbers as to the net
6 positive impact of building our plant and displacing
7 that, but it would be sizable.
8 Q. Okay. Thank you.
9 A. (Liston) One other thing to consider, I mean, Fraser's
10 -- Fraser's permits are going to stay in place, okay?
11 And, they, at some point in time, will decide whether
12 they want to -- they're talking about just having a
13 package boiler that would supply one -- their 260 pound
14 steam, whereas we would provide their 160 pound steam.
15 And, the whole -- And, of course, it will be somebody
16 other than Fraser that makes the ultimate decisions,

17 but, I mean, obviously, our plant won't run 100 percent
18 of the time. So, when our plant is not running, they
19 will have to fall back on their own boilers. So, I
20 mean, their permits will have to stay in place.

21 Q. Thank you. That's helpful. I'd like to turn to
22 something else that really hasn't been -- it's been
23 mentioned, but it hasn't been spoken to much, and this
24 is addressed in Paragraph 21 of your filing, Attorney

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1 Rodier. And, this relates to the Berlin Wastewater
2 Treatment Plant gray water use for makeup. What do you
3 anticipate to be the total makeup volume for the plant?
4 And, what amount of that would actually be gray water
5 and what amount would come from, effectively, clean
6 water, presumably from the City of Berlin? But, if you
7 could also address what your clean water source would
8 be, that would be helpful.

9 A. (Liston) Yes. Our clean water source, our drinking
10 water, our potable water will be the City of Berlin.
11 And, my memory is it's 30, 40 gallons a minute maximum.
12 Somewhere around 600 gallons a minute, pretty much
13 year-round, if we're at full load, basically related to
14 losses on the cooling tower, is the water that we would
15 take from the sewage treatment plant. Now, we have two
16 mechanisms or two technologies that we might use. One
17 of them is that we would use a GE system, or another
18 vendor's, and we would clean that water up, according
19 to them, sufficient so that we could drink it, all
20 right, and that's, you know, one potential process.
21 And, then, there's another one whereby, you know, the

22 City's water is cleaned up according -- cleaned up well
23 enough in sewage treatment plants by state and federal
24 law that they could meter it back into the river, not
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1 that you could drink it. But there are -- there are
2 cooling towers and condensers that can use that level
3 of clean water. So, we have two approaches there, and
4 we haven't decided which one we want to go -- go with
5 just yet. And, of course, it's a common -- it's an
6 evaluation of not only price, but also parasitic load
7 for one versus the other, and chemicals, and then, you
8 know, what your blowdown situation might look like, one
9 versus the other.

10 Q. And, how does 600 gallons per minute for makeup water
11 relate to the total discharge from the plant? What's
12 the size of the total discharge?

13 A. (Liston) They're at two million something.

14 Q. Two million something per day TPD?

15 A. (Liston) Per minute, I believe, right?

16 Q. It would likely -- It would likely, two million gallons
17 would likely be --

18 A. (Liston) No, no, no. Okay. But I think we're
19 somewhere around a quarter of their effluent flow.

20 Q. Okay. Thank you. That's helpful. You all have
21 addressed in various ways some of the provisions
22 mentioned in Paragraph 24 of your submittal. You
23 identify four different funding sources: "Federal
24 Stimulus monies, loan guarantees, favorable grants, and
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1 available specialized tax credits." I'm not looking
2 for an extensive brief on all of these things, but it
3 would be helpful to understand, with respect to each of
4 these, what it is that, for your facility, you are
5 seeking and what you think you would be receiving?
6 A. (Liston) Well, there -- for a long time, there's been
7 the Production Tax Credit, okay? And, recently, they
8 have said -- the federal government changed that, said
9 you could take it as a Production Tax Credit or an
10 Investment Tax Credit. And, the long and the short of
11 that is if you start construction, as the way it's
12 presently structured by such and such a date and finish
13 construction and achieve commercial operation, you can
14 have the option, okay, to have the government monetize
15 that Investment Tax Credit. Monetizing Investment Tax
16 Credits or Production Tax Credits have been around a
17 long time, but there was a middleman in the middle who
18 took a big piece of that. The government said "Hey,
19 we're indifferent to that. You know, I mean, it's the
20 same for us. If we give it to you directly, there's no
21 middleman and, therefore, it's more stimulative to
22 encourage this type of activity." So, roughly, 30 --
23 basically, it comes down to 30 percent of the
24 applicable amount for your capital construction can be

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1 available to you 60 days after start-up. So, if you
2 had 100,000 -- 100 million dollars' worth of applicable
3 capital costs, then the government would write you a
4 check, if you started up on time and met all the other
5 criteria, for \$30 million. Okay. This goes a long

6 ways towards putting the equity portion in that's
7 required. You know, additionally, we would have an
8 equity participant on this facility, and we're dealing
9 with several large international companies right at the
10 present time that will fill that spot.

11 We're looking a lot at New Market Tax
12 Credits, and they're -- you know, it's according to
13 census zone, and Berlin is not only applicable to New
14 Market Tax Credits, but it gets like double credit.
15 You don't get double the money, but it gets double the
16 consideration, because it is significantly
17 disadvantaged from what's happened up there and the
18 amount of unemployment and so on and so forth. So, New
19 Market Tax Credits are a very viable source of some
20 money. In that particular case, you do have middlemen
21 involved. So, we get some of it and they get some of
22 it, but it's another form of cash to build these
23 plants. And, then, of course, you're going to wind up
24 with a combination of equity and debt. I don't know,

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1 did that answer the question?

2 Q. Well, what I'm particularly trying to get at is there's
3 a statement here that "The nine-month site review
4 process could cause [you] to lose access to" these --

5 A. (Liston) That would be --

6 Q. -- and I'm interested in which of these --

7 A. (Liston) That would be the biggy. That would be the
8 federal --

9 (Multiple people speaking at the same
10 time.)

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MR. LISTON: Excuse me.

CHAIRMAN BURACK: I'm sorry.

BY CHAIRMAN BURACK:

Q. The sentence reads "The nine-month site review process could cause the CPD facility to lose access to", and you list four different items here. And, what I'm trying to understand is, which of those would you, in fact, lose access to if this went longer than nine months?

A. (Liston) The major one would be -- well, actually, the only one really that we would lose access to, for sure, would be the federal Stimulus money, okay? And, the ability to -- the ability to take it as a cash thing that we could use for, you know, an equity

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participation or to lower the debt. It may flip back to the situation whereby you would have to take it as Production Tax Credits. And, then, you would probably have to monetize it through the traditional avenues, which don't work right now, because Production Tax Credits require there be lots of people out there who are paying lots of taxes and need those sort of things. So, if we do not start the project this year, and "start" doesn't mean that you sign a contract or that you do the engineering, there's a significant amount. We actually have to be on the site, digging holes and doing things to get the construction started. And, then, we have to complete it, that is commercial operation, be selling electricity before the end of 2013.

16 Q. Okay. Thank you.

17 A. (Gabler) And, actually, if I might add, there's a
18 couple of things that Mr. Liston didn't think of.
19 There is actually a DOE Loan Guarantee Program that's
20 currently out, has a finite closing period. I don't
21 remember the exact closing date right now. But that is
22 also potentially at risk. The third one is, there's a
23 federal low interest, essentially, an Industrial Bond
24 Program being put out right now by the New Hampshire

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1 Business Finance Authority. Actually, the closure date
2 for making application to that is today. But we did
3 not apply for that, because of the uncertainty imposed
4 by this hearing. So, that is a classic example of,
5 there was potentially available bond money to complete
6 the construction of this project, that we have passed
7 because of this hearing. If we go into the full nine
8 month process, it puts additional things at risk, as in
9 the Investment Tax Credit, the DOE Loan Guarantee
10 Program, and there are also grants that have specific
11 windows that we may no longer qualify for.

12 Q. And, what's the approximate total cost of construction
13 of this project?

14 A. (Gabler) \$100 million.

15 CHAIRMAN BURACK: Thank you. Are there
16 other questions at this time from the Committee?

17 Mr. Scott.

18 DIR. SCOTT: Thank you.

19 BY DIR. SCOTT:

20 Q. Just one more follow-up on the economic side. Again,
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21 when I look at the "Declaration of Purpose" in 162-H: 1,
22 clearly, the law is intended to have a balance between
23 the environment and the need for an energy facility.
24 It also directs us to look at, among many other things,
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1 again, economics. Clearly, from balancing the
2 environment and the need for plants, if you never get
3 funding and you never build the plants, well, the
4 environment doesn't change. I'm presuming from your
5 discussion, Mr. Liston, that, if the plant is built,
6 you have a place to sell the market -- sell
7 electricity, worst case, to ISO-New England.
8 Obviously, you'd like to go to whoever has the best
9 cost. But my question -- and, having said that, so my
10 question is this, is somewhere in the middle to me
11 could be an environmental concern. What assurance do
12 we have that, once you start construction, that you
13 complete construction?

14 A. (Liston) Well, the project would be fully funded and
15 bonded. And, once we start construction, the
16 contractor is not going to stop. And, so, we'll have a
17 complete project and the owners will want to operate
18 it. I want to throw in one other thing, because, you
19 know, we're talking about "what could we lose here?"
20 Well, one of the issues, with anybody who is out in
21 this market and willing to buy power, is that they,
22 like everybody else, want all of the i's dotted and the
23 t's crossed. And, so, they are saying "do you have
24 your financing in place? What is your construction

1 costs? Who's the contractor? Are all the permits
2 completed?" If we throw this back to the point where
3 the permits are not completed, then we cannot really
4 advance to get the purchase power agreement, okay,
5 because the parties that would like to buy power have
6 specific amounts that they want, and they want to
7 contract it at specific times.

8 We also have to, you know, part of this
9 is to participate in a thing called the "Forward
10 Capacity Market". And, it's very expensive to even
11 apply to participate in the Forward Capacity Market.
12 But, once you are allotted a amount of capacity, if you
13 don't produce it, you now have penalties. So, I mean,
14 it's a classic "what comes first, the chicken or the
15 egg?" And, one of the things that absolutely has to
16 come first is that you have gotten your permits. And,
17 you know, obviously, before you get your permits, you
18 have to own your land, and then you have to have a
19 plan, and then you have to have your permits. But the
20 other things that we need to come after that, come
21 after that. We work on them all at the same time.
22 It's very much like trying to build a bridge across a
23 river. And, the river is so large that you hire two
24 construction companies, one working on one side and one

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1 working on the other. And, they have to meet in the
2 middle of that river and it has to come together
3 closely. And, it is very much like that. In order to

4 get all the parts and pieces together, you know, we
5 basically have to work on all of this.

6 But, if we -- if we start over on --
7 this basically would be a start-over, if we had to
8 start over. And, as you know, it opens it up to a
9 whole bunch of intervention, possibly, or whatever, so
10 that the whole thing could drag on for a really long
11 time. So, there's no way we're going to be able to, if
12 we have to start this process, not only would we lose
13 government Stimulus money, but we would not be able to
14 move forward and participate in the Forward Capacity
15 Market and we would not be able to lock up purchase
16 power agreements with out-of-state utilities.

17 CHAIRMAN BURACK: Before we go further,

18 --

19 (Brief off-the-record discussion with
20 the court reporter.)

21 CHAIRMAN BURACK: Just want to try to
22 figure out some timing here. Mr. Rodier, how much more
23 time, assuming we don't have a whole lot more questions
24 for you, how much more time do you think you need to do

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1 your --

2 MR. RODIER: Less than a minute.

3 CHAIRMAN BURACK: Less than a minute.

4 Okay. Great. Mr. Jones, Mr. Laflamme, recognizing that
5 there have been a lot of questions asked, and we would
6 encourage you to ask any questions you have of these
7 gentlemen on matters that have not already been addressed,
8 how much time do you think you will need to ask your

9 questions and get responses? Do you have a sense?

10 MR. JONES: A minute.

11 CHAIRMAN BURACK: So, not a lot of time.

12 Okay. The City of Berlin also has filed a letter with us.

13 Does the City Planner, or anybody else from the City, wish
14 to actually make an appearance and make a statement? Sir.

15 MAYOR GRENIER: Yes, I'd like about two
16 minutes to address the Committee.

17 CHAIRMAN BURACK: Okay.

18 MR. IACOPI NO: Just identify yourself
19 please.

20 MAYOR GRENIER: Possibly one minute.

21 CHAIRMAN BURACK: Okay. Thanks.

22 MR. McCUE: Attorney Tom McCue. I'd
23 like a minute to address the Council -- or, the
24 Commission.

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1 MR. GRENIER: I'm Mayor Paul Grenier
2 from Berlin.

3 CHAIRMAN BURACK: Okay. Thank you.
4 Mr. McCue, are you counsel for the City or are you
5 appearing on your own behalf?

6 MR. McCUE: I'm appearing today as a
7 City Councilor, City Planning Board. City Council.

8 CHAIRMAN BURACK: Thank you. I think
9 what we're going to do is try just to push through here
10 and see what we can do to get at least this portion of
11 this proceeding wrapped up today.

12 So, Attorney Rodier, if you want to --

13 MR. HARRINGTON: I just had one more

14 questi on.

15 CHAIRMAN BURACK: Mr. Harrington.

16 MR. HARRINGTON: I'll be quick.

17 BY MR. HARRINGTON:

18 Q. Just a follow-up on the financing issue. I guess we
19 can all make the assumption that, if you don't get
20 financing, you're not going to go anywhere with the
21 project. And, if I'm following this last train here,
22 and I just want to make sure I get it right, you're
23 saying that, if the Investment Tax Credit was put in
24 jeopardy, i.e. if you couldn't start construction this

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1 year, then am I correct in saying you'd almost have to
2 have a purchase power agreement, which would be very
3 difficult to get, because you didn't have the
4 Investment Tax Credits, because you wouldn't be as
5 competitive as other generation?

6 A. (Liston) No. If we don't have -- if we don't -- if
7 we're not able to have that mechanism of Stimulus from
8 the government, or the 30 percent grant, if you will,
9 then we have to fall back on Production Tax Credits.
10 Which means that you're financing more money or you
11 need more equity participation. Which means that, you
12 know, and then you have your Production Tax Credits,
13 which figures into a different model. It's not quite
14 as attractive. It's still doable, but it's not quite
15 as attractive.

16 The issue of the purchase power
17 agreement is that, "what comes first, the chicken or
18 the egg?" Okay? I mean, the people -- parties who

19 would potentially give a purchase power agreement want
20 to make sure that you have your permits and so on and
21 so forth, but also that the price that we would be able
22 to sell them electricity at depends upon how much we
23 have to capitalize and what our debt service is. And,
24 so, I mean it's all interwoven, if you will. And, it

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1 doesn't mean, in one case, that we drop dead. That
2 perhaps the most critical component, we certainly would
3 lose Stimulus. And, if we lost Stimulus, then we not
4 only can't sell power at a better price or we have to
5 get more for our power, but we would also have to get
6 more for our steam. And, if we have a delay in our
7 permitting, then, obviously, the parties that are going
8 to be looking at purchasing the Fraser are going to be
9 saying "well, they're out there that much further", and
10 however that plays into their thing, and however that
11 plays into collectively everybody's desire to help
12 Fraser and see that those jobs are retained.

13 Q. And, I'm assuming that, economically, it works better
14 for Clean Power if you were to sell some of your steam
15 to Fraser, whoever owns it, or sell it all as
16 electricity?

17 A. (Gabler) Indifferent.

18 A. (Liston) I think we're indifferent. You know, as much
19 as possible, we tried to set everything up so that
20 we're indifferent as to whether we sell steam or
21 electricity. And, we wanted to do it that way also,
22 because we do hope that eventually there would be a
23 district heating system for the City of Berlin that

24 would be another steam customer. And, it would be,
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1 obviously, seasonal. And, at that time, we would have
2 less electricity for sale, but we would, you know, just
3 be producing more steam. So, we've got it pretty much
4 set up so that we're indifferent to how we sell this
5 energy.

6 Q. So, the main thing here, I guess, on the financing
7 issue is, if you were to lose the ability to go with
8 the Investment Tax Credit, you could still have a
9 viable project, it would just make it not as viable as
10 it would be with it?

11 A. (Liston) The biggest difference would be that we would
12 need more equity participation than what we're
13 presently looking at.

14 CHAIRMAN BURACK: Okay. Thank you.
15 Attorney Rodier, do you want to complete?

16 MR. RODIER: Thank you. Very briefly.
17 I want to just go back to the third purpose of 162-H, it's
18 on the bottom of Page 7. There's a reference there, as I
19 was pointing out, two key words "integrated" and
20 "economic". Now, in going back and looking at the
21 legislative finding for the reason for 162-H, it talks
22 about "economic growth". Okay? So, I think the reference
23 in the bottom of Page 7, to the third purpose of 162-H, is
24 a reference to "economic growth", perhaps not financial

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1 issues.

2 And, now, in addition, very quickly,
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3 with regard to "integration", you know, I think you could
4 have a, and probably will have, let's say, a 20 megawatt
5 facility, let's say it's a transmission line, goes through
6 nine towns, okay? There you might, in your wisdom, say
7 "We do need an integrated approach there, because we've
8 got nine different entities with jurisdiction. Who's
9 looking at the larger picture, etcetera?" Here we have a
10 facility, and it's all located within one local
11 jurisdiction. So, I think, you know, that's the kind of
12 weighing and that's the kind of balancing that the
13 Committee has to do. On the integration front, I think
14 it's been integrated before the City of Berlin. Thank you
15 very much.

16 CHAIRMAN BURACK: Thank you, Attorney
17 Rodier. Now, Mr. Jones, Mr. Laflamme, do you have
18 questions for any of these gentlemen here?

19 MR. JONES: Just a couple.

20 CHAIRMAN BURACK: Could you please talk
21 into your microphone.

22 MR. JONES: I'm sorry. Just a couple.

23 INTERROGATORIES BY MR. JONES:

24 Q. The first one out of curiosity. On your spur, are you
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1 south or north of the PSNH, in other words, are you
2 below Frog Pond or are you -- are you out of that way?

3 A. (Gabler) It's below, south of Frog Pond.

4 Q. Okay. So, that won't interrupt activities with kids or
5 anything?

6 A. (Gabler) No.

7 Q. Great. I was kind of curious about one thing. I don't

8 recall whether you mentioned it or whether Mr. Liston
9 had mentioned it. If Fraser or their successor puts in
10 a natural gas line, what are they -- are they going to
11 -- I would assume they're going to produce their own
12 steam, and that would remove you from the -- but it
13 sounded like they were going to do both. How would
14 that work?

15 A. (Liston) The natural gas line is, once again, it's a
16 fossil fuel, and it's very volatile. Okay? And, it's
17 -- if the price of natural gas went up through the
18 roof, then, of course, they would be back into the same
19 problem of going out of business. Their desire to have
20 natural gas is for a short-term assurance or a
21 short-term play, because they figure they're even more
22 exposed with the oil.

23 Ultimately, when we go on their --
24 Fraser was -- their plan was that they were going to
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1 use the natural gas only in a package boiler to produce
2 260 pounds steam, which is a small component of what
3 they wanted. And, they want us to provide the 160
4 pound steam, which is the large component, by far, of
5 the process steam. And, the reason that they didn't
6 want us to provide all -- you see, either it had to be
7 260 or 160. If we provide them at 260, then, at the
8 other end over there, they would have had to use what's
9 called the "desuperheater", and basically spray cold
10 water into the warm steam and get it down to the
11 temperature and pressure that they want, which would
12 have been inefficient. So, it was their decision,

13 Fraser, that they would put in a package boiler, and
14 they will run that off of gas, okay? But, until we get
15 constructed, they would like to have gas and oil to try
16 to hold things together.

17 Q. If something were to happen, and nothing were to happen
18 with that facility and it went belly-up, would you
19 still be able to -- would you still be able to make
20 money running full condensing? Are you going to have
21 your own capacity to --

22 A. (Liston) Yes. If we tried to use a used turbine
23 generator and have a condensing extracting unit, we
24 wouldn't have this capability. So, we had to go out

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1 and buy a new unit. And, we looked around, and nobody
2 in the United States makes these in this size. So, we
3 went to, you know, Shin Nippon Company out of Japan,
4 and they made this type of a unit, whereby we could
5 have the maximum amount of flexibility. We could
6 either generate all electricity or we can produce a
7 tremendous amount of steam and very little electricity.
8 And, it has a turndown ratio, so that, even without
9 producing any steam, we can run efficiently down to
10 about ten megawatts.

11 Q. So, you will have all the condensing --

12 A. (Liston) Yes. Yes. We will still have --

13 (Multiple people speaking at the same
14 time.)

15 MR. LISTON: It's my fault. I keep
16 getting it wrong. I'm sorry.

17 MR. JONES: I interrupted you. I'm

18 sorry.

19 CHAIRMAN BURACK: Go ahead and ask your
20 full question, Mr. Laflamme -- or, Mr. Jones, would you
21 ask your complete question.

22 MR. JONES: I don't know the question.

23 BY THE WITNESS:

24 A. (Liston) The answer is, "yes", we're able to produce --
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1 we have a maximum amount of flexibility with this new
2 turbine.

3 BY MR. JONES:

4 Q. So, the question was, up front, are you going to have
5 the condensing capacity today for that event that you
6 couldn't sell it all?

7 A. (Liston) Yes.

8 Q. Okay.

9 A. (Liston) Yes. And, that condenser will either be a --
10 also a new type of technology, which can use the, as I
11 said, the water that would normally be discharged to
12 the river, or we'll put in additional technology to
13 clean it up. But, yes.

14 A. (Gabler) And, if I might, should Fraser go down, as
15 none of us want to happen, but, if it were to happen,
16 in our discussions with the North Country Regional
17 Development Council, the local economic development
18 parties, they are really interested in us, in our
19 ability to send steam power across the river, which
20 would significantly aid any redevelopment of that
21 facility, should Fraser die. So, not only is what
22 we're proposing good for Fraser, but it's good for the

23 next generation of that facility after Fraser.

24 CHAIRMAN BURACK: All set with questions
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1 for now? Okay. Thank you very much. Thank you. I think
2 what we'd like to do now is to hear from the
3 representatives of the City of Berlin or other Berlin city
4 officials who are here, and I know there's at least one
5 member of the public. Because it's possible that members
6 of the Committee may wish to ask each of you questions,
7 although it may not happen, but because that is a
8 possibility, I'm going to ask you each in turn, when you
9 come forward to stand by the podium, if you will introduce
10 yourselves, and then I will ask Steve to surrender an
11 oath, so that we have everybody under oath as they're
12 answering questions.

13 Okay. Mayor, would you like to come
14 forward.

15 (Whereupon Paul Grenier was duly sworn
16 and cautioned by the Court Reporter.)

17 PAUL GRENIER, SWORN

18 MAYOR GRENIER: Mr. Chairman, members of
19 the Committee, for the record, my name is Paul Grenier,
20 and I'm the newly sworn in Mayor of the City of Berlin.
21 And, I just want to inform the Committee that this whole
22 permitting process from the City happened under an -- in a
23 previous administration. I would like to go on record as
24 saying that the permitting process in Berlin was -- they

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1 vetted this process very well. We have a very good
2 planning board and a very good zoning board, we have very
3 dedicated citizens in the community that I think did a
4 very good job in vetting this particular project. The
5 City Council has voted to support this project through the
6 local permitting process. And, I'm here in front of you
7 to ask you to respect that local process. I think they
8 did a very good job.

9 Notwithstanding my statement on that, I
10 would like to bring a couple of items to bear here. I
11 think this whole notion that this facility is going to be
12 built partially to save Fraser has been very grossly
13 overstated. I sit -- I'm currently serving on an ad hoc
14 committee with Commissioner George Bald, DRED employee
15 Beno Lamontagne, and three other citizens in the local
16 community, to put together an energy package which would
17 bring landfill gas from the Mount Carberry landfill to
18 Fraser, mixed with natural gas from a spur off of Portland
19 Natural Gas Transmission System to Fraser. That would
20 save them 9 to \$11 million a year in energy costs. The
21 whole notion of that being, they -- any new prospective
22 owner of that mill will be converting that mill from a
23 flat paper mill to a tissue and towel mill, which will
24 require a much smaller steam load. So, tissue machines

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1 typically use one or two drier cans, which require a lot
2 less steam load. Hence, the conversion to natural gas to
3 make that happen. Natural gas is much more efficient, and
4 a lot less volatile in the energy industry.

5 So, we're going ahead with this project,

6 under the assumption that, if Clean Power Development, or
7 if Laidlaw Berlin Bio-Power get permitted, that hot water
8 and steam would be an added benefit. But in no way should
9 you be made to believe that that would be a primary source
10 of energy. Because, by the time this facility would be up
11 and running, the fate of that mill will already be
12 determined. I think the fate of this mill will be
13 determined within the next 10 to 15 weeks. So, I mean, I
14 just wanted to point -- bring this out to you, so that
15 here you're getting an accurate picture.

16 So, (a) I ask you to respect the local
17 permitting process. I think it was complete. I think the
18 people did a very good job. And, (b) I want you to
19 understand that there is no proposed biomass facility in
20 Berlin that would "save Fraser". That our efforts will,
21 by then, have already been predetermined, the fate of that
22 operation.

23 I'll take any questions that you might
24 have of me.

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1 CHAIRMAN BURACK: Thank you, Mayor. Go
2 ahead, Mr. Below.

3 CMSR. BELOW: Thank you. Thank you for
4 your attendance here. Is it safe to say that you're
5 comfortable that the City has the technical capability to
6 fully review the project and to consider the land-use
7 implications and environmental implications that the City
8 was concerned with?

9 MAYOR GRENIER: Yes. The only
10 significant question that I have that remains in the

11 permitting process is the easements for the road. As you
12 know, Clean Power attempted to get a purchase power
13 agreement from Public Service Company and was
14 unsuccessful. And, one of the parties that they're going
15 to have to secure an easement for the spur road will be
16 from Public Service Company of New Hampshire. And,
17 absence of securing that easement for the road, there may
18 be an issue as to where they're going to site the road.
19 They would have to come back to the City. There may be a
20 lot of undue pressure on the regulatory bodies of the City
21 to alter the spur road, given the fact that Public Service
22 Company may or may not want to play.

23 CHAIRMAN BURACK: Thank you. Other
24 questions?

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1 (No verbal response)

2 CHAIRMAN BURACK: Thank you.

3 MAYOR GRENIER: Thank you.

4 CHAIRMAN BURACK: Thanks very much.

5 Okay. Who else from the City would like to -- Mr. McCue.

6 MR. McCUE: Good afternoon.

7 CHAIRMAN BURACK: Just I'm going to ask
8 you to take an oath, if you would please.

9 MR. McCUE: Actually, as a member of the
10 Bar, I've already been sworn, but --

11 CHAIRMAN BURACK: Oh, you are a member
12 of the Bar. Okay. Very well. Thank you.

13 MR. McCUE: Good afternoon. As I said,
14 my name is Tom McCue. I'm an attorney. For about nearly
15 15 years, I lived and practiced here in Merrimack County,

16 in Loudon. And, for about four years now, I've been
17 living in Coos County, in the City of Berlin. I serve on
18 the Berlin City Council, as a representative representing
19 Ward II. I am the City Council's representative to the
20 Berlin Planning Board. I am also the City of Berlin's
21 representative to the Androscoggin Valley Regional Refuse
22 Disposal District, better known as the "District", which
23 owns the Mount Carberry Landfill, owns and operates the
24 Mount Carberry Landfill. The District also, by the way,

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1 owns much of the land surrounding the City of Berlin land
2 that surrounds that, where the -- that was sold to Clean
3 Power Development, and which kind of horseshoes around the
4 wastewater treatment plant. So, we've got the City of
5 Berlin's treatment plant where Clean Power wants to go,
6 but most of the rest of that area around there is owned by
7 the district. So, I've gotten to know about this project
8 in a number of capacities.

9 I started on the City Council about two
10 years ago, as part of the "prior administration", as it
11 was referred to. Shortly after we were sworn in, we had a
12 presentation from your Public Information Office about the
13 entire EFSEC process and what would be involved.

14 CHAIRMAN BURACK: If I may, when you
15 were talking about "your Public Information Office",
16 you're talking about "Department of Environmental
17 Services", is that correct?

18 MR. McCUE: No. Actually, the EFSEC
19 Committee.

20 CHAIRMAN BURACK: Okay. I believe that

21 was Tim Drew, who was is the Public Information Officer
22 for the Department of Environmental Services, who
23 frequently will provide explanations of the SEC process.

24 MR. McCUE: That's who I'm thinking of.
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1 CHAIRMAN BURACK: Okay. Thank you.

2 MR. McCUE: Yes. He gave a presentation
3 to the City Council, I believe it was back in 2008. And,
4 more recently, he gave a presentation to a group of local
5 citizens that had been organized by a gentleman by the
6 name of Max Makaitis, so-called "EFSEC Citizens Advisory
7 Committee, which is a group of local people that got
8 together, and that's related to the Laidlaw Project. But
9 the interesting thing was that, shortly after that second
10 presentation about the EFSEC process, is when the petition
11 that's the subject of today's hearing came out. And,
12 that's the biggest problem I had with this petition. As a
13 member of the Council, as a member of the Planning Board,
14 my biggest problem was the timing of this. This, as I
15 say, this process has been going on for a number of years.
16 There's been a number of public hearings, and at no point
17 did these issues come up. So, that was my biggest
18 concern.

19 As to my remarks, that's why I wanted to
20 speak, one thing I would ask is that, in the electronic
21 and hard copy that you will receive of the Petitioner's
22 presentation, I hope that contains the entire article in
23 the Berlin Daily Sun wherein I was quoted. Because that
24 article, it starts on Page 1, it jumps to Page 6, and it's

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1 here on Page 7 that it gets to my remarks. But, I think,
2 in terms of the context and stuff, you really need to read
3 the whole article.

4 CHAIRMAN BURACK: Would you just
5 introduce that as an exhibit? We'll just --

6 MR. McCUE: Sure.

7 CHAIRMAN BURACK: -- mark this as an
8 exhibit.

9 MR. McCUE: Yes. Sure.

10 CHAIRMAN BURACK: Okay.

11 (The document, as described, was
12 herewith marked as Exhibit McCue-1 for
13 identification.)

14 MR. McCUE: Glad I brought it along
15 then. Happened to have it in the file.

16 CHAIRMAN GETZ: Thank you.

17 MR. McCUE: What I actually said at that
18 Planning Board meeting, and I made the same statements the
19 following Monday at the City Council meeting, and I've
20 made the same statements probably in at least another, one
21 other public forum, I'm not sure, and certainly in a
22 number of private conversations. My point was that Clean
23 Power Development, under the statute, could have opted
24 into the EFSEC process, regardless of the megawatts

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1 involved. They chose instead to undergo the local
2 permitting process. That's what I appreciated. And,
3 that's what I was pointing out, and that's where I think
4 they did the right thing.

5 Now, I suppose you could take that
6 statement and out of that you could get the "they sized
7 the project to avoid your jurisdiction", but that wasn't
8 my point. That wasn't where I was going with it. My
9 concern remained with the dynamic between local control
10 and the state control.

11 So, that was my -- my two concerns with
12 it. One was that it was coming in at the 11th hour, and
13 that there had been, you know, I just, it's the sort of
14 project, no disrespect to the Committee, but I think the
15 locals had a better handle on a lot of what was going on.
16 Certainly, there are some technical issues, but, still, we
17 spent a lot of time and a lot of effort, Clean Power went
18 through a lot of work and a lot of effort. So, that's
19 what -- that's what was driving my remarks.

20 The Petitioners mentioned that they had
21 concerns with "biased individuals". That's troubling. I
22 don't know if they consider me one of those "biased
23 individuals", but I'm not quite sure who else they may
24 have been referring to with that. But that's a

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1 troublesome statement.

2 And, of course, the most troubling, what
3 I was really worried about, too, was, and, well, it came
4 out here, the Petitioners believe that "our community
5 needs to be protected from ourselves." That's -- I'm
6 sorry, but that's troublesome. That's really bothersome.

7 Again, this has been going on for -- for
8 a couple of years now we've been going through this
9 process. So, I would hope that the Committee would see

10 fit to not take jurisdiction of this project, and leave
11 the permitting and processes in place.

12 If any members have any questions, I'd
13 be glad to address them.

14 CHAIRMAN BURACK: Mr. Getz.

15 VICE CHAIRMAN GETZ: Good afternoon,
16 Mr. McCue. As I understood it, you said you're a member
17 of the Planning Board, and you've been participating in
18 these processes. My question goes, ultimately, to the
19 issue of the adequacy of the process at the local level.
20 But are you aware how the process and the scope of review
21 that the City of Berlin undertakes compares to other
22 cities in New Hampshire? Is there any notable
23 differences? Are they generally the same? Do you have
24 anything that you can tell us about that?

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1 MR. McCUE: What I would -- what I would
2 look to, in the nearly 15 years that I lived in Loudon, I
3 regularly attended and often represented clients before
4 the Loudon Planning Board and the Loudon Zoning Board of
5 Adjustment, and the Loudon selectmen. So, I'm pretty
6 familiar with the town government and how that town and
7 its planning board, its policies and procedures. That's
8 really the only one I could draw a comparison to. I
9 didn't serve on the Loudon board, but, again, I often
10 represented clients. I have curtailed some of my practice
11 up north by taking on these things, but that's okay. So,
12 that's the only one I could really compare it to.

13 I have found, and, again, the other big
14 difference there is that the Town of Loudon does not have

15 a Town Planner. So, where we have a City -- a full-time
16 City Planner, who helps guide the Board through their
17 decisions. So, I'm not sure if I'm answering your
18 question, but --

19 VICE CHAIRMAN GETZ: Well, actually,
20 maybe it will be something, I understand that the City
21 Planner will be speaking at some point, --

22 MR. McCUE: Yes.

23 VICE CHAIRMAN GETZ: -- I'm going to ask
24 her essentially the same type of question. Because,

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1 ultimately, I think that is part of, you know, the
2 analysis that occurs to me is, "is there something that
3 the City is not doing?" And, I think one way of looking
4 at it "is the City doing the same types of things that
5 other cities do?" So, I can draw some conclusion about
6 the adequacy of the local process. But I'll defer to the
7 City Planner.

8 MR. McCUE: I think it does, it does
9 compare there. And, one of the other differences, I
10 think, too, is, in the North Country, at this point, given
11 the economic situations and looking forward, we're trying
12 very much not to give any kind of an anti-business
13 sentiment, which was actually another part of this whole
14 thing that concerns me. That an applicant goes through
15 the whose process, and then, at the 11th hour, is
16 basically, you know, now is in this situation that sets
17 up. So, certainly, we're a lot more interested in
18 economic development and moving forward and stuff.
19 Whereas I think some communities, here in the southern

20 part of the state, are now more geared toward kind of
21 limiting development or controlling development.

22 I know, in the years that I was
23 observing in Loudon, one of the biggest problems there was
24 subdivisions and the explosion in housing that was going

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1 on. And, that board dealt often with how to control
2 growth and growth control, growth management ordinances
3 and things like that. Which, up in the North Country,
4 that's a little less of a concern, at this point anyway.

5 CHAIRMAN BURACK: Thank you very much.

6 MR. McCUE: Thank you.

7 CHAIRMAN BURACK: Ms. Laflamme.

8 MS. LAFLAMME: I'll answer questions,
9 but I have no prepared remarks.

10 CHAIRMAN BURACK: Very good. It would
11 be helpful if you would answer questions.

12 MS. LAFLAMME: Sure.

13 CHAIRMAN BURACK: Thank you.

14 (Whereupon Pamela Laflamme was duly
15 sworn and cautioned by the Court
16 Reporter.)

17 PAMELA LAFLAMME, SWORN

18 MS. LAFLAMME: And, for the record,
19 Pamela Laflamme, City Planner, City of Berlin.

20 CHAIRMAN BURACK: Thank you for being
21 here today.

22 MS. LAFLAMME: You're welcome.

23 CHAIRMAN BURACK: Mr. Getz.

24 VICE CHAIRMAN GETZ: Yes, I just wanted
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1 to follow up with the same question, and I think you've
2 heard it. Is are you familiar with how the City of
3 Berlin's planning process, scope of review, can you
4 compare it to other cities in the state? Is it comparable
5 or --

6 MS. LAFLAMME: Well, I think it depends.
7 You have several municipalities throughout the state.
8 And, I would say certainly, in the North Country, our
9 Board probably acts a lot differently than the remainder
10 of the boards across the North Country. We're probably
11 the only community, I think, within the North Country
12 Council's planning region that has a full-time staff
13 person, as well as a Zoning Officer and Code Enforcement.

14 Is it comparable? I mean, it's a very
15 difficult question. There's a lot of laypeople on the
16 Planning Board, but that happens in lots of communities
17 around the state as well. The larger communities
18 definitely have a more sophisticated board, they might
19 have a lot of board members who come from the disciplines
20 that make site plan review and subdivision review in their
21 communities a bit more involved and detailed than our
22 community does. But our community reviews all plans very
23 thoroughly. They're a very committed, dedicated
24 citizenry, and the makeup of our Board, many of them

1 long-time members, before I even started with the Board,
2 are -- I think give a very good review to all projects

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that come in front of them.

VICE CHAIRMAN GETZ: Thank you.

MS. LAFLAMME: You're welcome.

CHAIRMAN BURACK: If I may, were you present at these hearings that were referenced earlier, both with the Planning Board and the Zoning Board, all of those?

MS. LAFLAMME: Yes.

CHAIRMAN BURACK: And, were there members of the public present at each of those hearings?

MS. LAFLAMME: Yes, there were. At the Planning Board meeting, I believe at only one of the meetings did anyone choose to speak. It was a six minute period that we had a public hearing open, which is a long time for us. And, I think three members of the public spoke. At the ZBA member -- Board meetings, there were public hearings. I do not believe anyone spoke at those meetings. That's all we had for public comment.

CHAIRMAN BURACK: Mr. Below.

CMSR. BELOW: And, do you know if the plans for the road improvements --

MS. LAFLAMME: I have them. They're in {SEC 2009-03} {01-29-10}

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my office. They're in the file.

CMSR. BELOW: And, they would be available to any member of the public?

MS. LAFLAMME: Anyone. Absolutely.

CMSR. BELOW: Okay. And, do you feel that there's been communication with the Town of Gorham with regard to this project, if they have been -- need

8 information or wanted to know about it, they have had
9 access to that?

10 MS. LAFLAMME: Absolutely.

11 CMSR. BELOW: Okay.

12 MS. LAFLAMME: Yes. If they want that,
13 they would be -- and they know, they know they're more
14 than welcome to it. I have a very good relationship with
15 the Town Manager and the Assistant Town Manager. And,
16 either one of them could ask me at any time for any of
17 those documents, as well as any member of the public.

18 CMSR. BELOW: Okay.

19 MS. LAFLAMME: And, people have. We
20 have had people come in and look at the plans. So,
21 they're there.

22 CHAIRMAN BURACK: Any other questions
23 for Ms. Laflamme? Mr. Harrington.

24 MR. HARRINGTON: Yes. I don't know how
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1 familiar you are with the filings made in this case or
2 not. But this was the one that was made my Clean Power
3 Development. And, basically, they were stating the
4 reasons why they didn't feel there was need for SEC to
5 provide jurisdiction. I just wanted to ask your opinion
6 on two statements made here.

7 It said "Committee jurisdiction over the
8 Clean Power Development facility is not needed to ensure
9 full and complete disclosure to the public of [the] CPD's
10 plans." That was the first one. Do you think that that
11 -- do you agree with that statement?

12 MS. LAFLAMME: Yes.

13 MR. HARRINGTON: Okay. And, then, the
14 second one was, says "Committee jurisdiction over the
15 Clean Power Development facility is not needed to ensure
16 that the construction and operation of the facility is
17 treated as a significant aspect of land-use planning in
18 which all environmental, economic, and technical issues
19 are revolved in an integrated fashion." Do you agree with
20 that?

21 MS. LAFLAMME: Not understanding exactly
22 --

23 MR. HARRINGTON: Okay.

24 MS. LAFLAMME: -- how all of those terms
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1 were meant, it's hard to answer. But, I mean, for
2 instance, I believe that there was a restatement of what
3 "economic" meant in that, I would agree with Attorney
4 Rodier's updated statement about what he meant by
5 "economic" in there. As far as "did the Planning Board
6 review their finances for the land use?" No, that didn't
7 happen.

8 MR. HARRINGTON: Okay. Thank you.

9 MS. LAFLAMME: You're welcome.

10 CHAIRMAN BURACK: Mr. Iacopino.

11 MR. IACOPI NO: Pam, could you just give
12 us sort of a little rundown on your education and history.

13 MS. LAFLAMME: Certainly. I graduated
14 from Plymouth State University in 1997, with a degree in
15 Regional and Community Planning. I have -- I did an
16 internship at North Country Council. And, I've been with
17 the City of Berlin for almost ten years.

18

MR. IACOPI NO: Thank you.

19

MS. LAFLAMME: You're welcome.

20

CHAIRMAN BURACK: Thank you. Thank you

21

very much.

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MS. LAFLAMME: Thank you.

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CHAIRMAN BURACK: The gentleman sitting

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next to the Mayor back here.

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MR. ROZEK: I respectfully withdraw my

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comments. I think they have been kind of asked and

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answered at this point, might confuse the issue. Thank

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you, Mr. Chairman.

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CHAIRMAN BURACK: Thank you. Sir,

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please come forward. I would ask you to take an oath, if

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you would please.

8

(Whereupon Jonathan Edwards was duly

9

sworn and cautioned by the Court

10

Reporter.)

11

JONATHAN EDWARDS, SWORN

12

MR. EDWARDS: My name is Jonathan

13

Edwards. I'm an owner of a real estate firm in town. I

14

am also the Chairman of the Board of Assessors for Berlin.

15

And, I'm primarily here because I've been extremely

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well-educated by going through the process in Berlin, as a

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citizen, to learn about biomass. And, I think it's

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important to point out that, to this Committee, that, when

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the Petitioners are telling you that they think we "need

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to be saved" or "Berlin needs to be saved from

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themselves". I guess I'd disagree with Mr. McCue, to an

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extent on that, because I've been to a lot of meetings,

23 and I've looked over those petitions thoroughly. I've
24 looked at the names on those petitions, I know a lot those
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1 people. And, I know for a fact, by going to a lot of
2 those meetings, that those people were not at those
3 meetings. And, I think that that's a problem in Berlin.
4 You really have to go to meetings. You have to learn.
5 And, as Mrs. -- Pam Laflamme mentioned, there's not very
6 much in the way of attendance at those meetings. So, in a
7 sense, those Petitioners are trying to save themselves,
8 not realizing that we have a lot of people looking out for
9 our interests in Berlin.

10 On another note, as Chairman of the
11 Board of Assessors, I'd like to say that, as far as the
12 land around the waste treatment facility, I can't think of
13 a higher use than to increase the value from 50,000 that
14 the city got from Clean Power, to what's going to be there
15 afterwards. That's going to be very impressive for the
16 City, adding to its tax base.

17 That's all I had to say.

18 CHAIRMAN BURACK: Any questions for
19 Mr. Edwards?

20 (No verbal response)

21 CHAIRMAN BURACK: Very good. Thank you
22 very much, sir. Are there any other members of the public
23 who would like to make any comments today?

24 (No verbal response)

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1 CHAIRMAN BURACK: Very good. I think
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2 what we're going to do at this point is we are going to
3 close the hearing portion of this, public hearing portion
4 of this proceeding, and we're going to go into a
5 non-meeting, pursuant to RSA 91-A, with counsel, with a
6 goal of being back here in approximately 15 minutes or so,
7 and give folks a sense as to what our next steps will be
8 in this process. Thank you.

9 (Whereupon a recess was taken at 3:59
10 p.m. for the Committee to hold a
11 non-meeting with Committee Counsel. The
12 hearing reconvened at 4:19 p.m.)

13 CHAIRMAN BURACK: Ladies and gentlemen,
14 we're going to reconvene here. The Committee has
15 completed its non-meeting pursuant to RSA 91-A with legal
16 counsel. Here's how we will proceed with this matter. We
17 are going to reconvene here at 9:00 a.m. on Wednesday,
18 February 3rd, to deliberate in this matter. And, we
19 anticipate that we will have had an opportunity by then to
20 have reviewed the various documents that we have received
21 today. I'm not sure that we will have the transcript by
22 that time, but we feel we can deliberate without the
23 transcript. So, that is our plan.

24 I believe that we have now received
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1 copies from Ms. Laflamme, from the City of Berlin, of, I
2 believe, all of the documents that we had hoped to be able
3 to receive relating to this matter. But I just want to
4 confirm that there are no other documents, Mr. Rodier,
5 Mr. Gabler, Mr. Liston, that you have that you intend to
6 submit?

7 MR. GABLER: Correct.
8 CHAIRMAN BURACK: Thank you. Gentlemen,
9 do you have any other documents?
10 (No verbal response)
11 CHAIRMAN BURACK: Okay. Thank you.
12 CMSR. BELOW: And, I think they should
13 be back here momentarily, and we should have the originals
14 to return to you, if you can just wait just a few minutes.
15 MR. RODIER: Thank you.
16 CHAIRMAN BURACK: Counsel, do you have
17 anything else at this time?
18 MR. IACOPI NO: No. I'm going to have to
19 meet with the reporter for two minutes, because my
20 designations of the exhibits is different. I may just be
21 off.
22 CHAIRMAN BURACK: Okay. So, again, we
23 will reconvene on this docket on Wednesday, February 3rd,
24 at 9:00 a.m. for deliberations. Thank you. We will stand
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1 adjourned for the day.
2 MR. RODIER: Okay. Thank you.
3 (Whereupon the hearing was adjourned at
4 4:21 p.m., and the deliberations portion
5 of this docket to be held on February 3,
6 2010, commencing at 9:00 a.m.)
7 [After adjournment, Exhibits CPD-5,
8 CPD-6, CPD-7, and CPD-8 were provided to
9 the court reporter and marked for
10 identification.]

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