

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

May 18, 2016 - 10:01 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

NHPUC JUN23'16 AM 8:43

IN RE: SEC DOCKET NO. 2016-02
Joint Petition of IFM Global
Infrastructure Fund and
Nautilus Generation, LLC,
for Approval of the Transfer
of Membership Interests in
Essential Power Newington, LLC.
(Prehearing conference)

PRESIDING: Patricia Weathersby, Public Member
(Presiding as the Presiding Officer)

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq.
(Brennan Lenahan...)

Pamela G. Monroe, SEC Administrator

COURT REPORTER: Steven E. Patnaude, LCR No. 52



ORIGINAL

APPEARANCES:

FOR THE APPLICANTS:

Reptg. Nautilus Generation, LLC:

G. Dana Bisbee, Esq. (Devine Millimet)
Benjamin Hanna, Esq. (Devine Millimet)

Reptg. IFM Global Infrastructure Fund:

Barry Needleman, Esq. (McLane Middleton)

REPTG. COUNSEL FOR THE PUBLIC:

K. Allen Brooks, Esq.
Senior Assistant Attorney General
N.H. Dept. of Justice

I N D E X

PAGE NO.

**ISSUE: IDENTIFICATION OF ISSUES
IN DISPUTE AND NOT IN DISPUTE**

8

STATEMENTS/QUESTIONS BY:

Mr. Brooks

8

Mr. Bisbee

10, 14

Mr. Needleman

13

Mr. Iacopino

15

**ISSUE: DISCUSSION OF OVERALL
SCHEDULE AND TIME FRAMES**

17

STATEMENTS/QUESTIONS BY:

Mr. Iacopino

17

**ISSUE: DISCUSSION OF SCHEDULING
OF DISCOVERY NEEDS AND EVENTS**

17

STATEMENTS/QUESTIONS BY:

Mr. Iacopino

17

Mr. Brooks

18

Mr. Bisbee

18

ISSUE: DISCUSSION OF ANY EXPECTED MOTIONS

19

STATEMENTS/QUESTIONS BY:

Mr. Brooks

19

Mr. Iacopino

19, 21

Mr. Iacopino

21

ISSUE: ANY OTHER BUSINESS

23

STATEMENTS/QUESTIONS BY:

Mr. Brooks

23, 29

Mr. Bisbee

24, 28

P R O C E E D I N G

PRESIDING OFCR. WEATHERSBY: Okay.

We'll call the meeting to order. My name is Patricia Weathersby. I'm the public member of the Site Evaluation Committee. I've been appointed to serve as the Presiding Officer of this docket. This is Docket 2016-02, the Joint Petition of IFM Global Infrastructure Fund and Nautilus Generation, LLC, for approval of the transfer of membership interests in Essential Power Newington, LLC. Also with me is Pam Monroe, SEC Administrator, and Attorney Michael Iacopino, our Counsel, Legal Counsel.

On March 30, 2016, IFM Global Infrastructure Fund (IFM) and Nautilus Generation, LLC (Nautilus) filed a Joint Petition with the Committee seeking approval of transfer of membership interests in Essential Power Newington, LLC, formerly known as Newington Energy, LLC, (EP Newington) from IFM to Nautilus.

The Joint Petition requested the appointment of a three-member Subcommittee under RSA 162-H and an expedited review and

1 approval of the proposed transfer of ownership
2 interests in EP Newington from IFM to Nautilus.
3 On March 28, 2016, an order was issued
4 appointing the Subcommittee.

5 EP Newington owns and operates a
6 553.5-megawatt combined cycle, dual fuel
7 merchant electric generation facility in
8 Newington, New Hampshire (Facility). The
9 Facility was constructed and is operated under
10 the Certificate of Site and Facility
11 (Certificate) that was originally issued by the
12 New Hampshire Site Evaluation Committee
13 (Committee) to EP Newington on May 25, 1999.

14 At the time of certification, EP
15 Newington was owned by CED/SCS Newington, LLC,
16 which, in turn, was owned by Consolidated
17 Edison, Inc. On January 14, 2008, EP Newington
18 and North American Energy Alliance filed a
19 Joint Application with the Committee seeking
20 approval of transfer of ownership interest in
21 EP Newington from CED/SCS Newington, LLC, to
22 North American Energy Alliance, LLC. The
23 Committee approved transfer of ownership in EP
24 Newington to North Atlantic [American?] Energy

1 Alliance, LLC, on April 18, 2008. At the time,
2 North American Energy Alliance, LLC, was owned
3 by the North American Energy Alliance Holdings,
4 LLC, that, in turn, was owned by IFM.

5 Following the transfer, North
6 American Energy Alliance changed its name to
7 "Essential Power, LLC" and North American
8 Energy Alliance Holdings, LLC, changed its name
9 to "Essential Power Holdings, LLC". On
10 August 8, 2012, pursuant to corporate
11 restructuring, IFM contributed its interest in
12 Essential Power Holdings, LLC, to Essential
13 Power Investment, LLC. As a result, currently,
14 EP Newington is owned by Essential Power, LLC,
15 which is owned by Essential Power Holdings,
16 LLC, which is owned by IFM.

17 IFM entered into a Purchase and Sale
18 Agreement agreeing to transfer its membership
19 interest in Essential Power Investments, LLC,
20 to Nautilus. As a result of said transfer, EP
21 Newington, as a wholly owned subsidiary of
22 Essential Power, LLC, which is a wholly owned
23 subsidiary of Essential Power Investments, LLC,
24 will be transferred to Nautilus. The

1 Petitioners request the Subcommittee to
2 authorize said transfer.

3 Senior Assistant Attorney General K.
4 Allen Brooks is Counsel for the Public in this
5 matter.

6 We're here today for a prehearing
7 conference. A prehearing conference is an
8 informal proceeding that is authorized by the
9 Administrative Procedures Act and Site
10 Evaluation Committee administrative rules. The
11 purpose of a prehearing -- purposes of a
12 prehearing conference are set out on the agenda
13 that's available.

14 Let me now begin by taking
15 appearance, and then we'll follow the agenda
16 that's been circulated.

17 MR. BROOKS: Allen Brooks, Counsel
18 for the Public.

19 MR. BISBEE: I'm Dana Bisbee, from
20 the law firm of Devine Millimet, representing
21 Nautilus Generation, LLC. And my associate,
22 Ben Hanna, from Devine, is here with me.

23 MR. NEEDLEMAN: Barry Needleman, from
24 McLane Middleton, representing IFM.

1 PRESIDING OFCR. WEATHERSBY: Thank
2 you. So, next, we'll identify any issues in
3 dispute and those that are not in dispute.

4 MR. BROOKS: And, Dana, is it okay if
5 I go first? I'll look at what you have here as
6 the list of the purpose of the prehearing
7 conference, 1 through 7. And, so, the first is
8 "Offers of Settlement". And I think what we're
9 working towards, if we don't have it completely
10 done already, but I think it probably is done
11 to my satisfaction, subject to just a couple
12 more factual inquiries that I want to make, is
13 a settlement in the form of a joint proposed
14 decision to the Subcommittee.

15 We certainly don't want to step on
16 anyone's toes or act that we have more
17 authority than we do. But I think at least the
18 Parties have come to an agreement. And we
19 would like to submit that, I believe, jointly.
20 And I believe that the Applicant is prepared
21 to, if they haven't already, give you a draft
22 today, if you would like to receive it today.
23 Of course, you don't have to. You can wait
24 until the actual hearing, if you would like to

1 do that.

2 "Simplification of the issues", I
3 think that we've done it as much as we can
4 through the order.

5 "Stipulations and admissions of fact
6 or proof", we have some information, if the
7 Subcommittee would like it. But, again, I
8 think most of that will be wrapped up in the
9 proposed order.

10 "Limitations on the number of
11 witnesses", we do anticipate, I believe, having
12 a few witnesses testify live.

13 But the next is "Changes to standard
14 procedure during the hearing". And I would
15 propose that the Applicant's witnesses be
16 allowed to answer my questions and maybe to
17 speak in a more narrative way than would
18 usually occur during an examination that's more
19 formal.

20 So, with the Subcommittee's approval,
21 I will ask perhaps more open-ended questions
22 and allow them to tell more of a story. I
23 think that's more cohesive. Of course, the
24 Committee members can ask questions themselves,

1 either during or after.

2 But I think it might be easier to
3 digest the information if it's in a less
4 formalistic way and if it's more
5 conversational. And, so, that would be my
6 proposal. I believe the Applicant is okay with
7 that.

8 "Consolidation of examination of
9 witnesses", again, I think that we're more than
10 happy to coordinate and do -- have the
11 witnesses up only once, and to make sure that
12 all the bases are covered at that time, we'll
13 cooperate in that.

14 And, I don't have any other matters.
15 And I would be happy to hear from Applicant's
16 counsel as to whether what I said needs to be
17 amended or refined or stated more clearly, or
18 if they have any other ideas.

19 MR. BISBEE: Thank you, Allen, and
20 Madam Chair. Nothing to modify, but if I could
21 just add a little bit more to what Mr. Brooks
22 addressed.

23 We've had very good communications,
24 all three of us; the Joint Applicants and

1 Counsel for the Public. As you know, the Town
2 also has been in communication with us, and
3 they have submitted a letter in support of the
4 Application.

5 We've had a meeting with Allen in his
6 offices with the two witnesses whose prefiled
7 testimony has been submitted in this
8 proceeding. We also had a visit on-site at the
9 Facility with Allen just last week. So,
10 we've -- I think we've done well working
11 towards finding a resolution here.

12 And the jointly proposed Decision and
13 Order that we have prepared, it largely follows
14 what is already in the Petition and the
15 testimony, but it kind of pulls it together,
16 and it looks like we have an agreement among
17 the three of us on how that is worded, which is
18 ultimately going to be decided by the
19 Subcommittee.

20 The process that Allen described, in
21 terms of the testimony at the final hearing, is
22 acceptable to Nautilus. There are two
23 witnesses, not a few, just the two whose
24 prefiled testimony has been submitted. I

1 think, Madam Chair, you will hear from them in
2 a way that you will find helpful, and they
3 explain the situation very well.

4 In many regards, just let me put a
5 plug in here, this is a transfer of membership
6 interests in an LLC that's two or three levels
7 above the Facility level itself. So, the
8 ability of this Facility to continue to operate
9 in compliance with the Certificate is basically
10 just as it is today. And, as the Petition and
11 the testimony indicates, and as the proposed
12 Decision actually modifies it slightly, after
13 discussion with Allen, the intention is for the
14 same personnel to be running the plant as are
15 there now.

16 The funding for it, the credit
17 facility that's in place for it is the same
18 that is there now. So, this is a cooperate
19 transaction exchanging membership interests
20 that has no negative change to what is
21 currently in place right now at the Facility.
22 But what it does do is bring the addition of
23 the members of Nautilus to the table, which can
24 only enhance the ability of this plant to

1 operate in compliance with the Certificate.

2 PRESIDING OFCR. WEATHERSBY: Anything
3 further, Attorney Needleman?

4 MR. NEEDLEMAN: No. I think it's all
5 been adequately covered. Thank you.

6 PRESIDING OFCR. WEATHERSBY: I'm
7 thinking it might be helpful to get the
8 proposed Order today.

9 MR. IACOPINO: If it's ready to go,
10 that's fine.

11 MR. BISBEE: How many copies would
12 you like?

13 ADMINISTRATOR MONROE: Do you have
14 three?

15 MR. BISBEE: Yes.

16 *[Atty. Bisbee distributing*
17 *documents.]*

18 MR. IACOPINO: And can you get that
19 electronically to Pam as well, so that she can
20 get it on the Web and get it to the --

21 PRESIDING OFCR. WEATHERSBY: Sub-
22 committee members.

23 MR. IACOPINO: -- Subcommittee
24 members.

1 PRESIDING OFCR. WEATHERSBY: Okay.

2 Thank you.

3 MR. IACOPINO: You anticipate it to
4 be treated very similar to a stipulation, I
5 take it, on this?

6 MR. BISBEE: Yes. I wanted to
7 mention three very small parts of this, Madam
8 Chair, when the time is right. There are three
9 aspects of this that are slightly different
10 from what the Petition provides for. I just
11 wanted to highlight them. And I don't think we
12 need to amend the Petition or the testimony.
13 What I think we can do is is to have the
14 witnesses, when they appear on June 2nd, adopt
15 the small changes that I'll mention that are in
16 this proposed draft, the Decision and Order.

17 There was one small change to the
18 reference to the Carlyle Group that Matthew
19 O'Connor, one of the two witnesses, is a
20 Director of. The Petition and testimony says
21 he's a "Director of the Carlyle Group, L.P."
22 He's actually Director of the Carlyle Group,
23 without the "L.P." mentioned.

24 The Petition and testimony also

1 references that the Carlyle Group that is
2 raising funds for this transaction anticipated
3 having a commitment of one and a half billion
4 dollars by I think it was April, I can't
5 remember if it was April or May. But, in any
6 event, that anticipation, in fact, has worked
7 out and they have that commitment in hand. So,
8 there's a reference to that change.

9 One other, again, very small change
10 is a reference to the -- to one of the entities
11 that is affiliated with the Carlyle Power Group
12 that is funding this acquisition, that is the
13 Cogentrix group. That is actually the
14 management side, the operational side of the
15 Nautilus team. It is referred to as an
16 "in-house" group. They are affiliated, but the
17 corporate lawyers at Carlyle are telling us
18 that using the term "in-house" was not quite
19 the appropriate way to say it. So, we have
20 deleted the reference to "in-house" in the
21 proposed Order to reflect that change.

22 MR. IACOPINO: What is it?

23 MR. BISBEE: They're affiliated, I
24 think would be the way to state it, as opposed

1 to being "in-house".

2 MR. IACOPINO: Do they have common
3 ownership?

4 MR. BISBEE: I don't have the answer
5 to that.

6 MR. IACOPINO: That's probably
7 something your witnesses should be prepared to
8 answer.

9 MR. BISBEE: Yes. Yes.

10 PRESIDING OFCR. WEATHERSBY: Okay.
11 It wouldn't seem to me as though those would
12 require amendments to the Application.

13 Do you agree, Attorney Iacopino?

14 MR. IACOPINO: Yes, I agree. And, if
15 we're going to post the proposed Decision on
16 the website anyway, we only have the two
17 Parties. Mr. Brooks is apparently in agreement
18 with it. So, the public will be aware that
19 that's -- those three changes are there. And I
20 don't think there's any issue where you need to
21 file a formal amendment to the Petition.

22 PRESIDING OFCR. WEATHERSBY: We
23 should probably state on the record that there
24 have been no intervenors in this matter.

1 Now, let's talk about our time frames
2 and schedules. I think we have a hearing date,
3 with an overflow date set for June 2nd, at 9:00
4 a.m., and June 3rd, also at 9:00 a.m., if
5 needed, here at the PUC.

6 MR. IACOPINO: Does anybody really
7 think we're going to need June 3rd? Because I
8 know Ms. Monroe may have other plans for
9 June 3rd.

10 MR. BROOKS: No. I can't imagine
11 that we would need a second day.

12 MR. BISBEE: Unless the Chair and her
13 colleagues go crazy on us, then I think we
14 should --

15 PRESIDING OFCR. WEATHERSBY: Luckily,
16 there's only three of us. So, we can't carry
17 on too bad.

18 All right. So, let's -- we'll
19 probably free up that second day.

20 Let's see. Discussion of scheduling
21 of discovery needs and events, I think, is that
22 pretty much completed?

23 MR. IACOPINO: Mr. Brooks, you
24 indicated that you had a couple of factual

1 things you wanted to follow through with them.
2 Is that something you're comfortable doing
3 without a formal schedule? And, if there is
4 any problem, you can just rely on the rules
5 that we have?

6 MR. BROOKS: Yes. That won't be an
7 issue. The Applicant has been really gracious
8 throughout in answering all of my questions.
9 And I think it was because of my own
10 miscommunication by focusing on a proposed
11 Order is the only reason they didn't already
12 get me the information. And my understanding
13 is they have it maybe near completion, if not
14 complete, to give it to me anyway. I don't
15 anticipate there being any problem. They're
16 relatively ministerial questions anyway,
17 provided that people have the knowledge to
18 answer them.

19 But I'll let Dana confirm.

20 MR. BISBEE: Yes. Allen had made a
21 early request for informal discovery. We were
22 close to being ready to give it to him, when
23 the idea of the jointly proposed Decision and
24 Order was discussed. And, between the two of

1 us, we didn't -- we weren't on the same page.
2 So, we left the informal discovery off to the
3 side, which is close to being ready to go. And
4 we'll get it to him posthaste.

5 PRESIDING OFCR. WEATHERSBY: Okay.
6 Then, would I be correct in assuming, Attorney
7 Brooks, that there will be no expected motions?

8 MR. BROOKS: The only motion will be,
9 I believe, a joint motion to enter, unless
10 things go horribly wrong between now and then,
11 but I don't anticipate any other motions.

12 MR. IACOPINO: Have you received
13 any -- has Counsel for the Public received any
14 inquiries from the public at all about this?

15 MR. BROOKS: None.

16 MR. IACOPINO: And the same question,
17 I guess, to both the buyer and seller. Have
18 you guys received any inquiries as a result of
19 our publishing the notice of this docket? I
20 understand that you may have communications
21 with the Town and the various planning agencies
22 and whatnot. But have you received anything as
23 a result of the notice that we issued from any
24 member of the public? Any group or anything

1 like that expressing an interest in what you're
2 doing?

3 MR. BISBEE: No, we have not.

4 MR. NEEDLEMAN: No.

5 PRESIDING OFCR. WEATHERSBY: Ms.
6 Monroe, I don't recall seeing the letter from
7 the Town of Newington. Have we received that?

8 ADMINISTRATOR MONROE: I just made a
9 note to check. But I think it's on the
10 website.

11 MR. BISBEE: Yes, I don't know. I
12 can't remember.

13 ADMINISTRATOR MONROE: I will check
14 that.

15 PRESIDING OFCR. WEATHERSBY: It's
16 been submitted?

17 MR. BISBEE: It was pretty early on.

18 ADMINISTRATOR MONROE: Yes.

19 MR. BISBEE: So, it might have been
20 done.

21 ADMINISTRATOR MONROE: Everything's a
22 blur these days. But I will check. I made a
23 note to check that.

24 PRESIDING OFCR. WEATHERSBY: Okay.

1 ADMINISTRATOR MONROE: So, I will
2 check that.

3 PRESIDING OFCR. WEATHERSBY: Did you
4 write that down?

5 ADMINISTRATOR MONROE: Yes.

6 MR. IACOPINO: Do you guys know how
7 the fuel --

8 *[Court reporter interruption.]*

9 MR. IACOPINO: Do you guys know how
10 the fuel is sourced for this plant?

11 MR. BISBEE: Yes, we just talked
12 about that, when Allen was on-site last week.
13 It's a bi-fuel capable facility.

14 MR. IACOPINO: Right.

15 MR. BISBEE: It burns gas for the
16 most part, and that is provided from -- I guess
17 it must be the Maritimes & Northeast line that
18 is there, and they have a lateral connection to
19 it. And that's what they burn for the most
20 part.

21 They also have a reserve of oil
22 available that's pumped from a very close-by,
23 adjacent Sprague Energy facility, and they have
24 an arrangement with Sprague for that. But they

1 have a storage tank on their property.

2 MR. IACOPINO: They originally were
3 going to have two storage tanks, and then they
4 sought a waiver for an amendment to the
5 original Application to bring it down to one,
6 and then they, if I recall, back in the late
7 '90s, they got the pipeline from Sprague to the
8 Facility for the backup oil. They got an
9 exemption for that, if I recall correctly.

10 But I guess my question is just that,
11 I understand that the gas is going to come from
12 a nearby pipeline, but is it bought -- how is
13 it sourced? I mean, is it -- who do you
14 purchase it from and what's the -- I don't need
15 to know the terms of it, but what kind of
16 contract?

17 MR. BISBEE: I don't have that
18 information now. But I'll put that on the list
19 of matters for the guys to be ready to address.

20 MR. IACOPINO: Just have your
21 witnesses just prepared to answer that. I
22 don't know that it has anything to do with
23 this, it's just out of curiosity.

24 MR. BROOKS: And my understanding

1 from when he went on the site visit is that
2 they're subject to market rates for their gas
3 prices. So, for instance, in the winter, when
4 there's a crunch for gas and those prices go
5 up, that they are under the same constraints as
6 a lot of other gas facilities and face the same
7 financial hurdles that those facilities do.

8 MR. IACOPINO: That's, obviously, the
9 genesis of my question, a curiosity about all
10 of these gas plants right now.

11 MR. BROOKS: Yes.

12 PRESIDING OFCR. WEATHERSBY: Do we
13 have any other business pertaining to this
14 docket that needs to be discussed? Anyone have
15 anything else they would like to add?

16 MR. BROOKS: I'd just like to add
17 that I appreciate the work of the Applicant
18 here. I think last time we had a similar
19 transfer, and we did reach an agreement, but it
20 was somewhat forced and less than ideal,
21 because we had -- we didn't do it until the
22 last minute, even though I wanted to do that
23 ahead of time. And, so, one, had to kind of
24 cobble together sworn testimony and what we

1 were able to draft and kind of shoehorn into
2 what we needed on a short basis.

3 I asked them to work hard on getting
4 something proposed, and they did that. I asked
5 for a pretty extensive site visit, and they
6 gave me that, too.

7 So, I appreciate the cooperation
8 we've gotten so far.

9 PRESIDING OFCR. WEATHERSBY: Great.

10 MR. BISBEE: I don't have anything
11 more to offer. But I did want to ask if there
12 were any other topics that were on your mind
13 that we would want to have the two witnesses
14 particularly ready to address?

15 MR. IACOPINO: I think that, as
16 you're aware, one of the issues that generally
17 comes up in these types of matters is, you
18 know, and I assume that's somewhat addressed in
19 this decision, which I haven't read yet, the
20 proposed Decision, is, you know, where -- who's
21 going to be responsible? How far up the chain?

22 With the Chair's reading of sort of
23 the history and the ownership of the plant, you
24 know, we understand that it's a somewhat

1 complicated cooperate structure. And one issue
2 that always comes up in these hearings is, you
3 know, how many blocks up are we is the
4 responsibility, in the event something happens?

5 And I'm fairly sure that was probably
6 one of Counsel for the Public's concerns, and I
7 suspect it may be addressed in what you've
8 provided to us. Because I know it was one of
9 his concerns in the last case we had like this.

10 MR. BROOKS: Yes. It was something
11 that we talked about early on. And we had
12 extensive discussions about it, which caused me
13 to learn more about the specific corporate
14 structure here, and the level of removal
15 between the actual transfer that's occurring
16 here, what that group actually does, and the
17 actual operations day-to-day.

18 And, so, in the last case, I did want
19 to have some more assurances that the folks
20 taking over were going to have some
21 responsibility in that in some way. And, as
22 you know, essentially what we did is they
23 testified that they would make services
24 available to the applicant, but only the

1 applicant was going to be bound by the term,
2 which basically said they had to take advantage
3 of that, which is something that they would
4 probably do anyway.

5 In this case, in my opinion, the
6 connection between the actual transfer of --
7 that we're talking about and the compliance
8 with the Certificate is even more removed.
9 It's what I think, in a normal circumstance,
10 would be more like a pure financial transaction
11 at a high level.

12 For instance, if you had a publicly
13 traded company, and someone bought, you know, a
14 majority of shares in that company, I don't
15 think usually even the SEC would then look down
16 from that parent company a few levels and say
17 "well, whoever buying shares needs to come in
18 and see if they can have a hearing for a
19 transfer of a certificate."

20 And that's something more like this,
21 except that it just so happens that this
22 financial group has a specific type of asset
23 that they like to manage, that they have an
24 expertise in managing, and evaluating whether

1 it's going to get a return, evaluate whether
2 it's going to be, you know, long-term or
3 short-term and how much money. Their expertise
4 is in gas-fired plants for the most part, with
5 a little bit of hydro and some other mix in
6 there. So, that actually adds an additional
7 benefit of, they're essentially a financial
8 transaction, but they do have the wherewithal
9 to have done the footwork to see whether this
10 entity is actually running the way it should.

11 And I think, other than the -- that
12 high-level, you know, whose portfolio does all
13 of the -- do all the subsidiaries rest in, I
14 don't think that you'll see any change in any
15 of the management up even a few levels, and
16 certainly day-to-day at the plant. If you went
17 there, I don't think that you would notice,
18 before or after, that there's been any change
19 at all, personnel or otherwise. I don't even
20 think they're changing the logo, as Dana had
21 talked about.

22 So, we didn't -- I didn't feel that
23 we needed the same type of assurance that we
24 did in the last one. And I think there's a

1 legitimate question as to, whether in this type
2 of transfer, 162-H would require them to come
3 before the SEC? They have to, because the
4 Certificate says they have already agreed to
5 come before the SEC from the last transfer.

6 But, with that in mind, we didn't
7 feel that it was desirable to try to poke
8 through the kind of corporate shields that
9 would be, you know, the reasons why you set up
10 various LLCs and holding companies is to
11 protect and manage liability, so that you can
12 get your financing in place. And we didn't
13 feel any reason to upset that balance, and we
14 didn't think anyone -- that there was anything
15 to gain here. And, hopefully, you'll see the
16 same thing when you hear the testimony from the
17 witnesses.

18 MR. BISBEE: And, just to add to
19 that, that Pages 19 and 20 of the Petition
20 include Appendix A and Appendix B, which are
21 the organizational charts, pre-transaction and
22 post-transaction. And the description that
23 Allen just made is reflected graphically in
24 those two attachments. It looks almost

1 identical. It's the name at the top,
2 essentially, that is changing, and not anything
3 below that, including Essential Power
4 Newington, which is two or three levels below.

5 MR. BROOKS: And, to follow that up,
6 and to be candid, in the last application that
7 we had, it was somewhat of a way that they
8 chose to frame their testimony and their logic
9 in the Application is that they didn't have the
10 same type of explanation that I was able to get
11 from this Applicant. They basically said,
12 "Party X has the financial and managerial
13 wherewithal, and, therefore, Party Y should get
14 the Certificate." And, so, it really forced us
15 to say "well, then, you need to connect Party X
16 to Party Y, otherwise there's no way for us to
17 do it."

18 And I think that we have more
19 information here, at least I do, that allows me
20 to understand more about the type of
21 transaction this is.

22 MR. IACOPINO: I think it probably
23 would be helpful, Mr. Bisbee and Mr. Needleman,
24 if the witnesses were prepared to discuss the

1 relationship between the operating company and
2 the LLC. I understand what he's saying about
3 "going up the chain". I guess that leaves the
4 only questions I think that would be helpful to
5 the Committee might deal with, what that
6 relationship is with the operating, what's in
7 Cogentrix, as I asked before.

8 So, that's the only thing, in answer
9 to your question, --

10 MR. BISBEE: Thank you.

11 MR. IACOPINO: -- the only thing that
12 I can think of beyond what we've already
13 discussed.

14 PRESIDING OFCR. WEATHERSBY: Anything
15 further?

16 *[No verbal response.]*

17 PRESIDING OFCR. WEATHERSBY: Okay.
18 Then, I will adjourn this conference.

19 MR. BROOKS: Thank you.

20 MR. BISBEE: Thank you.

21 ***(Whereupon the prehearing***
22 ***conference was adjourned at***
23 ***10:29 a.m.)***
24