

1 **STATE OF NEW HAMPSHIRE**2 **SITE EVALUATION COMMITTEE**

3 **June 2, 2016 - 9:19 a.m.**
4 Public Utilities Commission
5 21 South Fruit Street Suite 10
6 Concord, New Hampshire

NHPUC JUN30'16 AM 9:35

7 **IN RE: SEC DOCKET NO. 2016-02**
8 Joint Petition of IFM Global
9 Infrastructure Fund and
10 Nautilus Generation, LLC,
11 for Approval of the Transfer
12 of Membership Interests in
13 Essential Power Newington, LLC.
14 (Adjudicative Hearing)

12 **PRESENT:**

SITE EVALUATION COMMITTEE:

13 Patricia Weathersby, Esq. Public member
14 *(Presiding as Presiding Officer)*

15 Dir. Elizabeth Muzzey Dept. of Cultural
16 Resources/Division of
17 Historical Resources

18 John Duclos, Designee Dept. of Environmental
19 Services

18 **ALSO PRESENT FOR THE SEC:**

19 Michael J. Iacopino, Esq. (Brennan Lenehan...)

20 Pamela G. Monroe, SEC Administrator

21
22
23 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

PAGE NO.

WITNESS PANEL: WILLIAM FELTS
MATTHEW O'CONNOR

Direct examination by Mr. Bisbee	11
Cross-examination by Mr. Brooks	20, 33
Redirect examination by Mr. Bisbee	32

QUESTIONS FROM THE SUBCOMMITTEE
AND SEC COUNSEL BY:

Mr. Duclos	42, 44, 66
Mr. Iacopino	43, 47, 57
Dir. Muzzey	46, 47, 64
Presiding Ofcr. Weathersby	52

QUESTIONS TO COUNSEL BY:

Dir. Muzzey 69

CLOSING STATEMENTS BY:

Mr. Brooks	72
Mr. Bisbee	73

I N D E X (continued)

	PAGE NO.
COMMENCEMENT OF DELIBERATIONS	74
MOTION BY DIR. MUZZEY that following acquisition by Nautilus, EP Newington will continue to have the adequate financial, managerial, and technical capabilities in order to ensure its continued compliance with all the terms and conditions of its original Certificate issued under Docket Number 98-01 and to grant the relief requested	77
<i>SECONDED BY MR. DUCLOS</i>	78
<u>VOTE ON THE MOTION</u>	79
DISCUSSION REGARDING THE JOINTLY PROPOSED DECISION AND ORDER	80
MOTION BY DIR. MUZZEY that, with the minor changes discussed by Atty. Iacopino, for the Committee to adopt this Jointly Proposed Decision and Order as our language	81
DISCUSSION ON THE PROPOSED MOTION	82
<i>SECOND BY MR. DUCLOS</i>	85
<u>VOTE ON THE MOTION</u>	86

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
1	Pre-filed Direct Testimony of William Felts	15
2	Pre-filed Direct Testimony of Matthew O'Connor	17

P R O C E E D I N G

PRESIDING OFCR. WEATHERSBY: Good morning. My name is Patricia Weathersby. I'm a public member of the Site Evaluation Committee. And I've been appointed to serve as the Precising Officer in the 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.

At this point, I'd like to ask the other members of the Subcommittee to introduce themselves.

DIR. MUZZEY: Elizabeth Muzzey, representing the Department of Cultural Resources.

MR. DUCLOS: My name is John Duclos. I'm representing the Department of Environmental Services.

PRESIDING OFCR. WEATHERSBY: Also with us is Attorney Michael Iacopino, who's Counsel for the SEC, and Pam Monroe, our Administrator.

1 By way of background, on March 30,
2 2016, IFM Global Infrastructure Fund and
3 Nautilus Generation, LLC, filed a Joint
4 Petition with the Committee seeking approval of
5 transfer of membership interests in Essential
6 Power Newington, LLC, which was formerly known
7 as "Newington Energy, LLC", from IFM to
8 Nautilus.

9 The Joint Petition requested the
10 appointment of a three-member Subcommittee
11 under RSA 162-H and an expedited review and
12 approval of the proposed transfer of ownership
13 interests in EP Newington from IFM to Nautilus.
14 On March 28th, 2016, an order was issued
15 appointing a Subcommittee.

16 EP Newington owns and operates a
17 553.5-megawatt combined-cycle, dual fuel
18 merchant electric generation facility in
19 Newington, New Hampshire. The Facility was
20 constructed and is operated under the
21 Certificate of Site and Facility that was
22 originally issued by the New Hampshire Site
23 Evaluation Committee to EP Newington on May
24 25th, 1999.

1 At the time of certification, EP
2 Newington was owned by CED/SCS Newington, LLC,
3 which, in turn, was owned by Consolidated
4 Edison, Inc. On January 14, 2008, EP Newington
5 and North American Energy Alliance filed a
6 Joint Application with the Committee seeking
7 approval of transfer of ownership interest in
8 EP Newington from CED/SCS Newington, LLC, to
9 North American Energy Alliance, LLC.

10 The Committee approved transfer of
11 ownership in EP Newington to North American
12 Energy Alliance, LLC, on April 18, 2008. At
13 the time, North American Energy Alliance, LLC,
14 was owned by North American Energy Alliance
15 Holdings, LLC, that, in turn, was owned by IFM.

16 Following the transfer, North
17 American Energy Alliance, LLC, changed its name
18 to "Essential Power, LLC" and North American
19 Energy Alliance Holdings, LLC, changed its name
20 to "Essential Power Holdings, LLC".

21 On August 8th, 2012, pursuant to
22 corporate restructuring, IFM contributed its
23 interest in Essential Power Holdings, LLC, to
24 Essential Power Investment, LLC. As a result,

1 currently, EP Newington is owned by Essential
2 Power, LLC, which is owned by Essential Power
3 Holdings, LLC, which is owned by Essential
4 Power Investments, LLC, which is owned by IFM.

5 IFM entered into a Purchase and Sale
6 Agreement agreeing to transfer its membership
7 interest in Essential Power Investments, LLC,
8 to Nautilus. As a result of said transfer, EP
9 Newington, as a wholly owned subsidiary of
10 Essential Power, LLC, which is a wholly owned
11 subsidiary of Essential Power Investments, LLC,
12 will be transferred to Nautilus. The
13 Petitioners request the Subcommittee to
14 authorize that transfer.

15 Senior Assistant Attorney General K.
16 Allen Brooks is Counsel for the Public in this
17 matter. There's no intervenors.

18 On or about May 18, 2016, the
19 Petitioners and Counsel for the Public filed a
20 Jointly Proposed Decision and Order Approving
21 Transfer of Ownership Interests in Essential
22 Power Newington". That Proposed Decision is
23 essentially a stipulation in the form of a
24 Proposed Order.

[WITNESS PANEL: O'Connor~Felts]

1 We are here today for an adjudicative
2 hearing, in other words a hearing on the merits
3 of the Joint Petition. Our authority to hold
4 this hearing is set forth in RSA 162-H:4,II and
5 RSA 162-H:5, I. The issues to be considered
6 are whether we should grant or deny the
7 Petition and whether we should adopt or not
8 adopt the Proposed Decision.

9 Let me begin now by taking
10 appearances.

11 MR. BROOKS: Allen Brooks, Counsel
12 for the Public.

13 MR. BISBEE: Dana Bisbee,
14 representing Nautilus Generation, and with me
15 is my associate, Ben Hanna.

16 MR. NEEDLEMAN: Barry Needleman, from
17 McLane Middleton, representing IFM global
18 Infrastructure.

19 PRESIDING OFCR. WEATHERSBY: Welcome
20 all. Now, we'll begin with the presentation of
21 the witnesses sponsored by the Joint
22 Applicants. The witnesses should stand and be
23 sworn by Mr. Bisbee, if you could swear your
24 witnesses.

{SEC 2016-02} [Adjudicative Hearing] {06-02-16}

[WITNESS PANEL: O'Connor~Felts]

1 (Whereupon **William Felts** and
2 **Matthew O'Connor** were duly sworn
3 by Atty. Bisbee.)

4 PRESIDING OFCR. WEATHERSBY: So, you
5 may continue on.

6 MR. BISBEE: I'm prepared -- thank
7 you. And we've presumed, Madam Chair -- and
8 good morning to you and to your fellow
9 Subcommittee members. We've presumed that it
10 would be okay, and I will ask your blessing to
11 have these two witnesses appear as a panel.
12 And I would like to take each one in turn to
13 get their testimony entered into evidence.

14 So, starting with Mr. Felts. First
15 of all, Bill Felts is on the left, to
16 everybody's left, Matt O'Connor is on your
17 right.

18 **WILLIAM FELTS, SWORN**

19 **MATTHEW O'CONNOR, SWORN**

20 **DIRECT EXAMINATION**

21 BY MR. BISBEE:

22 Q. So, Mr. Felts, would you please state your full
23 name and business address.

24 A. (Felts) William Felts, 9405 Arrowpoint

[WITNESS PANEL: O'Connor~Felts]

1 Boulevard, Charlotte, North Carolina 28273.

2 Q. And would you also please state the name of
3 your employer and the nature of your
4 employment.

5 A. (Felts) Cogentrix Energy Power Management, LLC.
6 I am the Executive Vice President - Mergers and
7 Acquisitions and Energy Management.

8 Q. You have in front of you, Mr. Felts, a document
9 that is identified as "Exhibit 1". Is that
10 your prefiled testimony, with redline changes
11 to it?

12 A. (Felts) Yes.

13 MR. BISBEE: Madam Chair, I believe
14 that you each have a copy of a redline version
15 of Mr. Felts's testimony that was originally
16 submitted with the Application in this
17 proceeding.

18 BY MR. BISBEE:

19 Q. Mr. Felts, if I may ask whether there are any
20 changes that you want to address before your
21 testimony is adopted this morning?

22 A. (Felts) Yes.

23 Q. And those are reflected in the redlines in
24 Exhibit 1?

[WITNESS PANEL: O'Connor~Felts]

1 A. (Felts) Yes.

2 Q. Would you briefly go through those changes and
3 explain them to the Subcommittee please.

4 A. (Felts) Sure. The changes are two categories.
5 One is a change in a typo and the others are
6 changes in revision to a summary of megawatts
7 of generation the Company's been involved in
8 years. I'll take them by Page. Page 2, Line
9 19, the word "in-house" has been deleted.
10 Technically, Cogentrix is not in-house at
11 Carlyle; we're owned by Carlyle. Line 22, the
12 megawatts -- gigawatts was listed as "10", it's
13 been revised to "13".

14 Page 3, Line 4, the megawatts of assets
15 that are owned by -- currently owned by
16 Carlyle, consisting of 17, was listed as
17 "4,080", is revised to "4,070". Line 6, in the
18 table, the first category listed as "Hopewell &
19 Portsmouth", the net capacity was listed as
20 "115", revised to "110". The next line in the
21 table revised is "Southeast PowerGen", the net
22 owned capacity was listed as "2,113", has been
23 revised to "2,108". The "Total" line in that
24 table was listed as "4,080", has been revised

[WITNESS PANEL: O'Connor~Felts]

1 to "4,070".

2 Page 4, Line 1, the megawatts that
3 Cogentrix has managed and operated was listed
4 as "7,600", has been revised to "8,200". Line
5 6, the chart listed below had a total of
6 "4,000 megawatts", that's been revised to
7 "4,200". Line 7, listing the chart, those
8 megawatts have been revised to include two
9 additional facilities that were not previously
10 listed. The first being "Mid-Georgia",
11 utilizing the "Siemens Westinghouse W501D"
12 technology, capacity of "300 megawatts" has
13 been added. The second facility that has been
14 added is "River Road", utilizing "GE 7FA"
15 technology, "248 megawatts" of capacity. And
16 the "Total" line at the bottom of the table,
17 the left column, which is the "Capacity
18 Megawatts", was listed as "7,671", has been
19 revised to "8,219", and the right sum column,
20 for "GE 7FA megawatts", was listed as
21 "4,026 megawatts", has been revised to
22 "4,274 megawatts".

23 Q. Do you have any other changes that you wish to
24 make to your testimony, Mr. Felts?

[WITNESS PANEL: O'Connor~Felts]

1 A. (Felts) No.

2 Q. Then, let me ask you whether the redline
3 version, Exhibit 1, is testimony that you now
4 adopt and affirm it as true and accurate?

5 A. (Felts) Yes.

6 MR. BISBEE: With that, madam Chair,
7 I would ask that it be entered into evidence as
8 "Exhibit 1"?

9 PRESIDING OFCR. WEATHERSBY: So
10 entered.

11 (The document, as described, was
12 herewith marked as **Exhibit 1** and
13 entered as a full exhibit.)

14 MR. BISBEE: And, before questioning
15 of Mr. Felts, if I could turn to Mr. O'Connor
16 to get his testimony introduced.

17 BY MR. BISBEE:

18 Q. Mr. O'Connor, let me run through those same
19 questions of you. Please state your full name
20 and business address.

21 A. (O'Connor) My name is Matthew O'Connor. My
22 business address is 299 Park Avenue, New York,
23 New York 10171.

24 Q. And what is the name of your employer and what

[WITNESS PANEL: O'Connor~Felts]

1 is the nature of your employment?

2 A. (O'Connor) My employer is the Carlyle Group.
3 And I am a Managing Director and Partner in
4 that company.

5 Q. Thank you. You have in front of you what is
6 marked as "Exhibit 2", a copy of which the
7 members have. Is that a copy of the testimony
8 that you submitted in this proceeding, with
9 redlined changes?

10 A. (O'Connor) Yes.

11 Q. Would you please explain to the Subcommittee
12 what those changes are.

13 A. (O'Connor) Sure. On Page 1, the business
14 address on Line 6 has changed to reflect the
15 new business address for our office at 299
16 Park. And I am a Managing Director and Partner
17 at the "Carlyle Group", not "Carlyle Group,
18 L.P."

19 The second change to my testimony reflects
20 all of the similar changes that Mr. Felts just
21 went through on the tab -- the table, regarding
22 the megawatts and all of those particular
23 changes in his document.

24 Q. And, if I could pause you there please. Those

[WITNESS PANEL: O'Connor~Felts]

1 would be the number changes starting at the
2 bottom of Page 4, and going over to the table
3 on Page 5?

4 A. (O'Connor) That's correct.

5 Q. And you have one more at the bottom of Page 5
6 as well?

7 A. (O'Connor) Yes. One more on the bottom of Page
8 5, in Line 12. We have secured commitments for
9 capital of over 1.5 billion as of April the
10 9th, 2016.

11 Q. Are there any other changes you would make to
12 your testimony?

13 A. (O'Connor) No.

14 Q. Do you now adopt this testimony reflecting the
15 redline changes in Exhibit 2 as your testimony
16 and affirm it as true and accurate?

17 A. (O'Connor) Yes.

18 MR. BISBEE: Thank you. Madam Chair,
19 with that, I would ask that that be entered as
20 "Exhibit 2"?

21 PRESIDING OFCR. WEATHERSBY: Yes.

22 (The document, as described, was
23 herewith marked as **Exhibit 2** and
24 entered as a full exhibit.)

[WITNESS PANEL: O'Connor~Felts]

1 MR. BISBEE: And that is all that I
2 wanted to accomplish, to get these witnesses
3 introduced and their testimony introduced.
4 And, with that, I would turn it over to -- oh,
5 wait, let me just add for the record, too, that
6 you have a redline version of their testimony
7 that we provided this morning and that has now
8 been entered. I will provide a clean version
9 of both of those documents to Ms. Monroe.

10 PRESIDING OFCR. WEATHERSBY: Thank
11 you. Attorney Brooks, do you have any
12 cross-examination of these witnesses?

13 MR. BROOKS: Yes. Thank you, Madam
14 Chair. And, first of all, I apologize, I'm
15 getting over a cold. So, if I'm not clear,
16 just ask me to repeat myself.

17 I would propose, and I believe that
18 the Applicants' attorneys have agreed, that I
19 would ask the questions in a somewhat less
20 formalized manner, so that they can provide a
21 more narrative response. I think it's easier
22 to be a little bit more conversational. It's
23 complicated, and to go through it in a stilted
24 manner is going to make it, I think, more

[WITNESS PANEL: O'Connor~Felts]

1 complicated.

2 And, just by way of background, I
3 would like to point out that the Applicant did
4 meet with me at my office for a considerable
5 amount of time. Did exchange written
6 information outside the record, but I'll ask
7 some of those questions on the record. And
8 actually provided me with a very extensive site
9 visit of the Facility itself. And, so, I can
10 tell you that, by way of background, unlike
11 some generation facilities I've been to that
12 are essentially kind of look like Industrial
13 Revolution era machines, this is
14 state-of-the-art, it's 2002. It essentially
15 looks like a stainless steel kitchen when you
16 get out there.

17 And, so, we saw everything there was
18 to see. We see the SCR on the outside, we saw
19 turbines on the inside, and we went through it
20 very extensively. And it was explained to me
21 in great detail how the plant functions, and
22 how the Applicant intends to continue the
23 function of that plant. So, I appreciate all
24 of that information from the Applicant.

[WITNESS PANEL: O'Connor~Felts]

1 So, with that, I will probably start
2 asking questions of Mr. O'Connor, if that's
3 acceptable.

4 **CROSS-EXAMINATION**

5 BY MR. BROOKS:

6 Q. Mr. O'Connor, just tell me again, I think you
7 mentioned you're with the Carlyle Group, but
8 tell me what the Carlyle Group does?

9 A. (O'Connor) Sure. So, the Carlyle Group is one
10 of the world's largest alternative asset
11 managers. What that means is we collect
12 investment money from institutional investors
13 all over the world and invest it on their
14 behalf in numerous vehicles. I represent the
15 private equity arm of the Carlyle Group.
16 There's more than \$180 billion under management
17 in this firm, and I represent one fund within
18 the firm.

19 Q. And, so, when you say it's "alternative
20 investments", how's that -- what's it an
21 alternative to? What's the normal kind of
22 structure and what's different about what you
23 do? I think you mentioned to me that you might
24 have investors that are more like the New

[WITNESS PANEL: O'Connor~Felts]

1 Hampshire Retirement System, rather than
2 individual investors. But can you explain it?
3 A. (O'Connor) Sure. So, we have a group of
4 investors, like public pension plans and the
5 like, who commit capital to our fund. And we
6 then go out and invest it in, for our fund
7 purposes, power generation. Other funds that
8 we offer are traditional buyout funds, where
9 you buy a public company and then turn around
10 and sell it. And, so, we are in the business
11 of private equity, where we invest in
12 non-public entities and provide a return to
13 investors. "Alternative" means not stocks or
14 bonds, which is what traditional pension plan
15 money would go into. So, we are -- the reason
16 it's called "alternative" is because it is an
17 alternative to traditional publicly listed
18 securities, like stocks or bonds.
19 Q. Okay. So, the purpose of those investors is
20 simply to get a return, but you happen to have,
21 at least with respect to these types of
22 transactions, some expertise with respect to
23 managing electric generating units, and
24 specifically gas facilities. Tell me about

[WITNESS PANEL: O'Connor~Felts]

1 that level of expertise.

2 A. (O'Connor) Sure. I'll do it in two ways. One,
3 our investment team, there's ten of us, we
4 collectively have decades of investment
5 experience in the power generation sector. My
6 background is from General Electric. I have
7 experience on the industrial side, where we
8 used to make the machines, but also on the
9 investing side and owning and investing in
10 these facilities. My colleagues have similar
11 experience at different institutions. So,
12 decades of experience in investing in these
13 types of facilities.

14 In addition, as Bill will describe, we
15 are -- we manage Cogentrix Energy, which has
16 been in the electric power generation business
17 for well over 30 years. And, so, that team has
18 a collective experience that is far greater
19 than even ours in managing and operating these
20 facilities.

21 Q. And I notice neither Carlyle or Cogentrix is
22 shown on the org chart. I don't know if you
23 have a copy of that in front of you?

24 A. (O'Connor) Yes, I do.

[WITNESS PANEL: O'Connor~Felts]

1 Q. So, can you just explain the relationship
2 between both of those entities and where they
3 might be on the org chart or why they would not
4 be shown on the org chart?

5 MR. BISBEE: Excuse me, just to be
6 clear. Are you referring to Appendix B?

7 MR. BROOKS: I'm going to look at
8 Appendix B, because my understanding is that is
9 the proposed new structure.

10 MR. BISBEE: Uh-huh. And this is
11 Appendix B to the Application.

12 MR. BROOKS: Which is on Page 20
13 still, is that right?

14 MR. BISBEE: The Application has not
15 changed.

16 MR. BROOKS: Okay.

17 **BY THE WITNESS:**

18 A. (O'Connor) Okay. So, the entity that you see
19 at the top of the org chart is "CPP II". That
20 is the fund entity that I manage with my
21 partner. That is a fund that is sponsored by
22 the Carlyle Group. And, so, we, CPP II, has
23 its own discrete commitments from investors,
24 different than the Carlyle Group. So, this is

[WITNESS PANEL: O'Connor~Felts]

1 a discrete fund inside of the Carlyle Group and
2 sponsored by the Carlyle Group.

3 Cogentrix is not an investor or an owner.
4 It is our -- it is our collective manager of
5 all of our facilities. So, Cogentrix works for
6 Carlyle, and will work for Nautilus in this
7 capacity.

8 BY MR. BROOKS:

9 Q. Okay. Tell me, in broad terms, about what the
10 transaction actually is. My understanding is
11 that this is not a targeted acquisition of the
12 Newington facility, but this is actually an
13 acquisition of a portfolio. So, tell me about
14 what the target is and what the transaction is
15 going to look like?

16 A. (O'Connor) Sure. As was read into the opening
17 statement, IFM owns Essential Power
18 Investments, which is the third box from the
19 top of this org chart. We are purchasing
20 Essential Power Investments and all of its
21 affiliated companies underneath. There are ten
22 other generation facilities in this portfolio.
23 EP Newington is one of them. EP Newington
24 happens to be one of the larger and more

[WITNESS PANEL: O'Connor~Felts]

1 substantial facilities in the portfolio. The
2 transaction is the purchase of the entire
3 Essential Power Company, which is EP --
4 Essential Power Investments, that includes the
5 11 generating facilities, including EP
6 Newington, and an operating team and platform
7 in Princeton, New Jersey.

8 Q. Thank you. And I want to go off on just a
9 small tangent, because you did mention that you
10 worked for GE previously.

11 A. (O'Connor) Yes.

12 Q. And my understanding is that this plant
13 actually, I believe, uses GE turbines, it may
14 have been either managed or run by GE at some
15 point in the past. So, can you tell us the
16 relationship between GE and this particular
17 plant and whether there's any advantages to any
18 existing contracts with GE?

19 A. (O'Connor) Sure. So, it is GE technology.
20 It's GE 7FAs. And that's just a particular
21 type of gas turbine that's being used. It's
22 one of the more commonly used generating
23 turbines that GE makes. It's their flagship
24 product, if you will. GE used to own and --

[WITNESS PANEL: O'Connor~Felts]

1 used to, excuse me, own the operations of the
2 Facility. So, they actually did all of the
3 operations for the prior owners. The contract
4 that is in place is a services agreement. And
5 we are going to maintain that for the time
6 being. There is a benefit to an owner that
7 doesn't have an operational team, like we do in
8 Cogentrix, to have that type of a contract. We
9 have our own operational team that can handle a
10 lot of the same things that GE would do at the
11 Facility. But we, at this point, don't have
12 any intention to break that contract.

13 Having worked at GE, those contracts are
14 relatively common in the marketplace for them
15 to provide services to their own equipment.
16 Much like any other manufacturer would do in a
17 heavy manufacturing business.

18 Q. Right. And GE has been making jet engines
19 since probably the '50s or so. And, so, that
20 kind of expertise will continue to be
21 available.

22 A. (O'Connor) Yes, I mean, GE made -- built the
23 first power plant in the United States, way
24 back when, in New York City, through its

[WITNESS PANEL: O'Connor~Felts]

1 founding of the company through Thomas Edison.
2 So, yes, it's been in the business quite a long
3 time. It's made all of these engines for a
4 number of decades through the years of
5 evolution. So, yes. GE has got a ton of
6 experience in doing this.

7 Q. Okay. So, explain exactly how the acquisition
8 is going to work financially.

9 A. (O'Connor) Sure. So, we -- there is the equity
10 for the transaction or the purchase price is
11 broken -- the purchase price, let's start
12 there, is broken into two different components.
13 One is the existing lending facility, or loan,
14 that exists at the Essential Power business.
15 We are going to assume and take over that loan.
16 So, there will be no new financing in place.
17 We will assume the existing loan that's in
18 place. IFM put a loan in place to handle the
19 acquisition, to help finance their deal, much
20 like you would a mortgage for a house, same
21 concept. We are providing equity from our
22 fund. So that the equity for the transaction
23 will be coming from the investors in CPP II.

24 Q. Okay. Is the intention to buy this portfolio,

[WITNESS PANEL: O'Connor~Felts]

1 and then make significant changes to the way in
2 which Newington Power is managed within the
3 portfolio?

4 A. (O'Connor) The intent is that nothing will
5 change on the day-to-day operation of EP
6 Newington and the Facility.

7 Q. Let me go back to your previous statement about
8 the debt facility that's already in place. I'm
9 looking at Page 12 of the Application.

10 A. (O'Connor) Okay.

11 Q. It says "This debt facility" --

12 *[Court reporter interruption.]*

13 BY MR. BROOKS:

14 Q. "This debt facility contains working capital
15 lines of credit and letter of credit facilities
16 that will be available in order to provide
17 additional function financial resources to
18 operate and maintain Essential Power
19 Investments generation facilities". I assume
20 that's what you were just talking about, is
21 that right?

22 A. (O'Connor) That's correct.

23 Q. Okay. Will there be any additional stresses on
24 the Newington facility or Essential Power,

[WITNESS PANEL: O'Connor~Felts]

1 what's listed as the borrower, or anyone else
2 in the chain that could change the financial,
3 you know, viability of the plant or create some
4 kind of stresses that are not there already?

5 A. (O'Connor) None that I can think of. We will
6 -- we're providing fresh capital into the
7 company, and the existing loan facility has
8 been serviced without issue since 2012, and we
9 will maintain that for the foreseeable future.

10 Q. And, generally, the Newington facility is able
11 to operate in a way that is actually
12 financially sound, as far as you know, right
13 now?

14 A. (O'Connor) Yes.

15 Q. There has been, in recent years, constraints on
16 the amount of natural gas that a plant might be
17 able to get during winter, --

18 A. (O'Connor) Uh-huh.

19 Q. -- because there's different users and
20 different needs during that time, and there
21 have been significant price spikes. So, do you
22 believe that Newington Energy is subject to
23 those same stressing factors, especially during
24 the winter months?

[WITNESS PANEL: O'Connor~Felts]

1 A. (O'Connor) Yes, it is. And that phenomenon, if
2 you will, was -- we did a fair bit of diligence
3 on that. What I would say is, EP Newington
4 doesn't suffer from access to fuel. There are
5 times where gas prices spike because of heating
6 load, taking gas availability away from
7 generators. What happens in those
8 circumstances is EP Newington will either
9 choose to purchase the expensive gas and run,
10 because there's profit to be made, or, as you
11 were at the site, you would have seen that we
12 have oil availability on-site. And, so, to the
13 extent that the price of burning oil and
14 converting oil to electricity is better than
15 the price -- than converting gas to
16 electricity, we will switch to oil. And that's
17 the plan going forward. So, there's ample
18 access to gas. Price spikes are a function of
19 the market, and we have plans to deal with
20 that.

21 Q. Okay. And, remind me, is the alternative fuel
22 oil, is that on-site or is that from the
23 Sprague facility next door?

24 A. (O'Connor) It's from Sprague. But we have

[WITNESS PANEL: O'Connor~Felts]

1 storage available to us, yes.

2 Q. All right.

3 A. (O'Connor) There's a dedicated pipeline to the
4 Sprague facility, that we have a million
5 gallons, I believe, of storage.

6 Q. All right. And that's directly adjacent, I
7 think?

8 A. (O'Connor) Yes, it is.

9 MR. BROOKS: Okay. I actually have
10 no further questions for Mr. O'Connor.

11 MR. BISBEE: Madam Chair, if I could
12 ask, actually, if the Subcommittee members are
13 going to ask questions of Mr. O'Connor before
14 Mr. Felts is examined by Mr. Brooks, then I'll
15 wait. But, when the time is right, I have a
16 couple of follow-up questions.

17 PRESIDING OFCR. WEATHERSBY: I think
18 we'll ask our questions of the panel, and
19 whoever is best equipped to handle the question
20 to answer. So, you may carry on.

21 MR. BISBEE: Just a couple of
22 follow-up questions, Mr. O'Connor.

23 **REDIRECT EXAMINATION**

24 BY MR. BISBEE:

[WITNESS PANEL: O'Connor~Felts]

1 Q. Just a minute ago Mr. Brooks asked you about
2 the million gallons of oil storage.

3 A. (O'Connor) Uh-huh.

4 Q. And he asked whether it was immediately
5 adjacent. Just let me ask you or Mr. Felts,
6 the million gallon storage tank is on
7 property -- it's on the Essential Power
8 Newington property or is it on Sprague
9 property?

10 A. (Felts) There are two sources for oil. There's
11 an oil tank on-site. Additionally, there's a
12 pipeline to Sprague, which also has storage
13 on-site.

14 Q. Thank you. And just the last question for you,
15 Mr. O'Connor. Again, Mr. Brooks asked you
16 about the transaction as a whole. You alluded
17 to the other facilities, the other companies
18 that will be acquired when this transaction
19 closes. Would you just describe where the
20 Newington plant fits into the mix of all the
21 facilities that you'll be acquiring?

22 A. (O'Connor) Excuse me, what do you mean by "fits
23 into the mix"?

24 Q. The significance of Newington, --

[WITNESS PANEL: O'Connor~Felts]

1 A. (O'Connor) Okay.

2 Q. -- in relation to the others.

3 A. (O'Connor) Sure. The Newington facility
4 represents almost a third of the value of the
5 transaction, in terms of how we look at the
6 overall value of Essential Power. It is the
7 most significant asset in the portfolio, as far
8 as we're concerned.

9 MR. BISBEE: Thank you. That's all.

10 PRESIDING OFCR. WEATHERSBY: Mr.
11 Brooks, would you like to cross-examine
12 Mr. Felts?

13 MR. BROOKS: Yes. Thank you, Madam
14 Chair. And, actually, I have just maybe one
15 question that I'd open up to either of these
16 gentlemen to answer.

17 **CROSS-EXAMINATION (resumed)**

18 BY MR. BROOKS:

19 Q. Which is the general question that I do ask of
20 the applicants, which is, in this case, are
21 there any pending lawsuits, pending criminal
22 actions, or any other assertions against either
23 Nautilus, CPP II or Cogentrix that are related
24 to fraud or misrepresentations or any other

[WITNESS PANEL: O'Connor~Felts]

1 similar actions?

2 A. (O'Connor) None.

3 Q. Thank you. Okay. Thank you, Mr. Felts. These
4 questions more go to the operation of the
5 plant. But maybe, in broad terms, can you tell
6 us how the day-to-day operations of the plant
7 will or will not change after the purchase?

8 A. (Felts) Sure. The day-to-day operations won't
9 change after we take over ownership. The
10 day-to-day operations are conducted by
11 personnel at the plant. The personnel at the
12 plant have successfully operated this Facility
13 since its start-up, and we have a lot of
14 confidence in their capabilities.

15 Q. How many staff members do you think will change
16 over once the purchase is made?

17 A. (Felts) I don't anticipate any.

18 Q. So, if the plant right now is able to run by
19 itself, what value does Cogentrix add to the
20 management of that Facility?

21 A. (Felts) Sure. Cogentrix -- is it all right if
22 I give some background on Cogentrix?

23 Q. Sure. Yes.

24 A. (Felts) Cogentrix is a power company. It was

[WITNESS PANEL: O'Connor~Felts]

1 formed in 1983. We're the power platform for
2 Carlyle. We were privately held until 2003.
3 We were purchased by Goldman Sachs, we became
4 their power platform. And, in 2012, Carlyle
5 purchased us, and we became their power
6 platform. Cogentrix has been involved in
7 nearly 50 power plants over our term. That's
8 roughly 13 gigawatts of power. We've
9 developed, built, operated and/or managed
10 facilities that include coal, waste coal, gas,
11 oil, hydro, and solar over our 30 plus years.
12 We have approximately 300 people in the
13 company, of which roughly 80 are in the
14 Charlotte office.

15 We have our own Engineering Department,
16 which has been involved in the construction of
17 plants. As such, we have significant knowledge
18 in how plants are designed. We have
19 substantial experience in how power plants are
20 operated. When we are involved in managing
21 power plant assets, we take the skill sets
22 we've learned over 30 plus years and we apply
23 those principles to the plant. Every plant is
24 different. No plant will always have the same

[WITNESS PANEL: O'Connor~Felts]

1 procedures and processes in place that we will
2 like to see. And we learn as well from every
3 plant that we purchase or manage. And we apply
4 that incremental knowledge to every new plant,
5 and those principles are what allows Cogentrix
6 to stand apart from other power companies in
7 the industry.

8 How we intend to apply that to this
9 Facility is we will allow the Facility to
10 utilize the engineering expertise at Cogentrix,
11 whereas the Facility now would need to hire a
12 third party to get that engineering expertise.
13 As well as our operations personnel have the
14 ability to see across the fleet of plants that
15 Cogentrix has and apply knowledge learned at
16 other facilities to each individual plant.
17 That, as well, would be applied to this
18 Facility.

19 In addition, the existing team that
20 provides for the purchasing of fuel and the
21 sales of power, that team is still in place,
22 has been in place since 2012, in Princeton, and
23 that team will continue to be there and perform
24 those functions for the plant.

[WITNESS PANEL: O'Connor~Felts]

1 Q. Okay. And you mentioned the experience
2 Cogentrix has with managing other facilities.
3 Does that include experience with the GE 7FA
4 turbine that you have at this Facility?

5 A. (Felts) It does. We have, over the 30 plus
6 years, operated or managed 16 combined cycle
7 plants, that is what Newington is, and, of
8 those 16, seven of those plants use the GE 7FA
9 technology, just like Newington.

10 Q. Okay. And I'll ask you the next question, but
11 either of you are welcome to answer. When the
12 purchaser was considering whether or not to
13 seek out this portfolio, did you perform your
14 own due diligence as to the operations of this
15 Facility? And, if so, what did you learn?

16 A. (Felts) We do due diligence at Cogentrix for
17 technical reasons and support the overall
18 diligence effort that is led by Carlyle. We
19 have a team of personnel that, on any
20 acquisition, we send out to each site to review
21 what we see for equipment condition and the
22 practices and procedures that are conducted at
23 the facility. We also perform internal
24 analysis on the state of the facility, the

[WITNESS PANEL: O'Connor~Felts]

1 health of the facility, and generate from that
2 a report, to then provide to Carlyle as to our
3 recommendations for areas for improvement and
4 areas for deficiencies. For the Newington
5 facility, we found it to be a well-run,
6 well-maintained facility that we think would be
7 a good addition to our fleet.

8 Q. Okay. When the SEA-3 facility was being
9 evaluated, I believe that there had been an
10 issue, because some of the water infrastructure
11 out to that part of Newington has some
12 constraints, and some additional requirements
13 were placed on that facility in the past. Does
14 this Facility have anything similar with
15 respect to access to water?

16 A. (Felts) Not that I am aware of. The Facility
17 does have an agreement in place to provide
18 water. There aren't constraints that I'm aware
19 or under that agreement or under operating
20 conditions.

21 Q. Is there any tank on-site that's for water
22 storage?

23 A. (Felts) There is water storage on-site.

24 Q. And, again, what do you envision day-to-day

[WITNESS PANEL: O'Connor~Felts]

1 Cogentrix's role being with respect to the
2 day-to-day operations of the Facility?

3 A. (Felts) We'll have folks from our Management
4 group, which includes the Asset Management
5 personnel, which get involved with commercial
6 contract issues, if there are any. We'll have
7 folks from our Operating group, which will work
8 with the plant regarding plant outages, plant
9 outage planning, part purchases, and we'll also
10 be assisting with the day-to-day purchase of
11 natural gas, and the sales of electricity into
12 the marketplace.

13 Q. Okay. And you just mentioned "outages". My
14 understanding is that the Facility currently
15 has a forced outage rate of about 3 percent or
16 so. How does that relate to these types of
17 plants overall or plants in general?

18 A. (Felts) Quite good. The industry average for
19 this type of combined cycle facility is about
20 four and a half percent. Newington has fared
21 extremely well over the years, which does
22 demonstrate the quality of the personnel at the
23 plant.

24 Q. Okay. And, just to make sure everybody

[WITNESS PANEL: O'Connor~Felts]

1 understands, can you describe what a "forced
2 outage" is? My understanding is that it's
3 different from like a planned maintenance
4 outage. And can you just explain what a
5 "forced outage" is?

6 A. (Felts) Sure. Planned outages are situations
7 where you know that you need to bring equipment
8 down for annual maintenance type of work, and
9 you plan that ahead of time. Forced outages
10 are situations where equipment breaks, you
11 weren't anticipating that, and, as such, you
12 end up having a situation where you're not
13 providing power when you had committed to
14 providing that power. It's an important metric
15 that's measured in the power industry, because
16 it allows you to see how well you are
17 performing relative to the industry average.
18 Newington has consistently performed better
19 than the industry average over the years.

20 Q. And I believe in the Application, or maybe in
21 your testimony, you also provide a metric for
22 how well Cogentrix does with facilities that it
23 manages with respect to forced outages. So,
24 what is -- what is the Cogentrix metric for

[WITNESS PANEL: O'Connor~Felts]

1 forced outages?

2 A. (Felts) Sure. Ours is better than at
3 Newington, and that's not to take anything away
4 from Newington, but we have an extremely
5 focused approach to operations on facilities,
6 and have many years of experience, and our rate
7 is even lower than Newington's. And that's
8 part of what we would hope to bring to the
9 facilities, assisting the folks at the plant
10 with the things that we have learned, to help
11 them to operate their plant more efficiently
12 and to plan better for things that will happen,
13 but you don't know when they're going to
14 happen, but you try to avoid them.

15 MR. BROOKS: Okay. Thank you. I
16 have no further questions.

17 PRESIDING OFCR. WEATHERSBY: Okay.
18 Are there any questions from the Subcommittee?

19 MR. DUCLOS: Well, if I may begin?

20 PRESIDING OFCR. WEATHERSBY: Sure.

21 MR. DUCLOS: My name is John Duclos.
22 And I represent the Department of Environmental
23 Services.

24 BY MR. DUCLOS:

[WITNESS PANEL: O'Connor~Felts]

1 Q. And, Mr. Felts, I'm a little confused on the
2 relationship between IFM and Cogentrix.
3 Because they're not owned by Carlyle, but
4 you're speaking about "we" now and you work for
5 Carlyle. So, is there like a contractual
6 relationship or is this a longstanding
7 agreement? Or how is that relationship really
8 consummated?

9 A. (Felts) So, I'm an employee of Cogentrix, and
10 Cogentrix is owned by Carlyle.

11 Q. Okay. So, I must be confused on that part, the
12 part with the updated testimony was that
13 Carlyle did not own Cogentrix?

14 A. (O'Connor) If I may? It's a little
15 complicated. So, --

16 Q. I'm here to understand it.

17 A. (O'Connor) So, let me at least clarify. The
18 way the relationship is structured is that the
19 Carlyle Group, who I work for, does not own
20 Cogentrix, but our investors do. So, the money
21 that came to buy Cogentrix came from our
22 investors. So, technically, the fund investors
23 own Cogentrix. We manage it day-to-day on
24 their behalf. So, that's why when we say "the

[WITNESS PANEL: O'Connor~Felts]

1 Carlyle Group, the corporate entity, doesn't
2 own it", because our fund investors do. That's
3 the basic, they each take a proportionate
4 interest in the entity that owns Cogentrix as
5 investors in that company, and we manage it for
6 them.

7 MR. BROOKS: And, if I may, I think
8 one of the word changes may have been from
9 "in-house" to "own". So, I think "in-house"
10 would imply that there was a department or
11 something internally within the organization, I
12 think that was what was changed on the
13 testimony.

14 WITNESS O'CONNOR: Correct.

15 BY MR. IACOPINO:

16 Q. Is it just the CPP II fund that has that
17 relationship?

18 A. (O'Connor) No. Our prior funds do as well.
19 So, there are three current owners of
20 Cogentrix. We have two predecessor funds in
21 the Carlyle Group that have ownership interests
22 in Cogentrix. We, as the Carlyle Power
23 Partners investment team manage the Cogentrix
24 entity on our investors behalf on a day-to-day

[WITNESS PANEL: O'Connor~Felts]

1 basis.

2 Q. And the other two Carlyle entities that share
3 the ownership of Cogentrix, are they in the
4 power business or is Cogentrix in some other
5 industry as well?

6 A. (O'Connor) No. They are -- the investments
7 that are managed by Cogentrix are in the power
8 business only.

9 BY MR. DUCLOS:

10 Q. So, it would be safe to say that Cogentrix
11 and -- or, Carlyle Group has some operational
12 control over the Carlyle Group as a -- or,
13 sorry, over Cogentrix as a whole?

14 A. (O'Connor) Correct.

15 Q. Have the technical capabilities to provide to
16 this generation facility?

17 A. (O'Connor) So, that what I would say the way to
18 think about it is, we are on the board of
19 Cogentrix Energy, we, from Carlyle. And we are
20 in the management framework of the company.
21 The CEO or the president of Cogentrix reports
22 into us at Carlyle. And Cogentrix Energy is
23 handling all of the technical aspects of
24 managing our power generation fleet across all

[WITNESS PANEL: O'Connor~Felts]

1 the funds.

2 So, we sit on the management side of the
3 business and Cogentrix handles all of the
4 technical and engineering type activities for
5 all of our power plants across everything we've
6 owned.

7 Q. Thank you. Another question on the financial
8 aspects. You said on, I believe, Mr. O'Connor,
9 secured the, on April 9th, 2016, secured the
10 \$1.5 billion in your updated testimony?

11 A. (O'Connor) Uh-huh.

12 Q. What is the total acquisition of this transfer
13 overall?

14 A. (O'Connor) The total enterprise value?

15 Q. Right.

16 A. (O'Connor) Or how much in equity we'll be
17 providing?

18 Q. How much are you -- what's the total cost of
19 the acquisition?

20 A. (O'Connor) We've not publicly disclosed that.
21 We will contribute, I'll give you the range of
22 equity, the amount of equity commitment we're
23 going to make for this is somewhere around 20
24 percent of our fund capital. So, this is a

[WITNESS PANEL: O'Connor~Felts]

1 significant investment for us.

2 Q. As you know, I represent the Environmental
3 Services Department. So, I tried to look at
4 some of the environmental record of the Carlyle
5 Group's CPP I and II, to try and determine what
6 your environmental record is overall. Is there
7 any environmental orders or civil actions or
8 criminal actions of any of your acquisitions or
9 operating facilities currently, do you know?

10 A. (Felts) None that I'm aware of.

11 A. (O'Connor) Nor am I.

12 MR. DUCLOS: That's it for me for
13 now. I'd probably reserve the right to ask
14 more questions, should they come up.

15 PRESIDING OFCR. WEATHERSBY: Sure.

16 DIR. MUZZEY: Thank you.

17 BY DIR. MUZZEY:

18 Q. Just a couple more questions about Cogentrix.
19 You spoke of all the different power plants
20 that you had worked with through time since
21 1983. Have any of those been in the area, in
22 the New England area, New Hampshire area?

23 A. (Felts) No.

24 Q. And, thinking --

[WITNESS PANEL: O'Connor~Felts]

1 A. (Felts) I'm sorry. I was thinking New
2 Hampshire. In New England, we do have a
3 facility in New England.

4 Q. Where is that?

5 A. (Felts) It's in northwest of Providence. It's
6 called the "RISEC" facility.

7 BY MR. IACOPINO:

8 Q. What type of facility?

9 A. (Felts) It's a gas-fired, combined cycle,
10 similar to this.

11 Q. Size?

12 A. (Felts) About the same size.

13 BY DIR. MUZZEY:

14 Q. And that was one of the facilities newly added
15 to your chart in the prefiled testimony?

16 A. (Felts) I don't think that was newly added. I
17 think that was in the chart previous.

18 MR. BISBEE: If I may, Madam Chair?
19 If we look at Page --

20 MR. DUCLOS: Page 5 of 8.

21 MR. BISBEE: Yes.

22 MR. DUCLOS: In Matthew's testimony.

23 WITNESS FELTS: Listed right above
24 the newly added "River Road" --

[WITNESS PANEL: O'Connor~Felts]

1 *[Court reporter interruption.]*

2 WITNESS FELTS: It's the facility
3 above "River Road".

4 DIR. MUZZEY: Okay. Thank you.

5 MR. BISBEE: It's all on the prior
6 page as well, if I may add, in the original.

7 DIR. MUZZEY: Thank you.

8 BY DIR. MUZZEY:

9 Q. And, thinking of the existing expertise that GE
10 offers the EP Newington plant, how do you see
11 Cogentrix working with that? You mentioned
12 that Cogentrix will be doing the fuel
13 purchasing and sale of power?

14 A. (Felts) Yes.

15 Q. Is GE not doing that now?

16 A. (Felts) They do not.

17 Q. And, so, who is doing that now for EP
18 Newington?

19 A. (Felts) There are -- there's a team of people
20 in Princeton that do that now, and have been
21 doing that since --

22 Q. Oh.

23 A. (Felts) -- they purchased the Facility.

24 Q. Okay. I misunderstood that.

[WITNESS PANEL: O'Connor~Felts]

1 PRESIDING OFCR. WEATHERSBY: I'm
2 sorry. You say, "in Princeton", that is
3 Essential Power headquarters?

4 WITNESS FELTS: That's correct. Yes.
5 Sorry.

6 BY DIR. MUZZEY:

7 Q. So, Cogentrix won't be doing that going into
8 the future?

9 A. (Felts) That same team will continue to do
10 that. However, Cogentrix will be providing
11 assistance to that team, as well as Carlyle
12 will be providing assistance to that team.

13 Q. And this "assistance", what's the nature of
14 that relationship? Is it a contracted service,
15 that type of thing?

16 A. (Felts) Once we close on the transaction, we'll
17 have contractual relationships between
18 Essential Power operating business units and
19 Cogentrix. Over time, those will be changed,
20 and, since we'll be one company, those will no
21 longer be needed. But, until that time, we'll
22 have some short-term arrangements put in place
23 to allow for that.

24 A. (O'Connor) And just to clarify a little

[WITNESS PANEL: O'Connor~Felts]

1 further, if I may? Today, EP Newington
2 purchases services from the Essential Power
3 Operating Company and the Essential Power
4 Services Companies. So, Essential Power
5 headquarters in Princeton, New Jersey, provide
6 services to EP Newington for which it pays them
7 a fee. That relationship will continue until
8 we merge the companies. And the fee
9 arrangement will stay in place, just the funds
10 will go to a Cogentrix entity, instead of an
11 Essential Power entity over time.

12 Q. Thank you. And the GE contracts that are
13 currently existing, those will continue as
14 well?

15 A. (Felts) The plan is to keep those in place for
16 now. Because Cogentrix has operated so many
17 plants with GE equipment, and because there are
18 a number of other companies that provide the
19 same types of services on GE equipment,
20 Cogentrix will continue to evaluate
21 alternatives that could ultimately result in
22 cost savings to the plant, but still provide
23 the same level of service. And, if, at some
24 point, we think that makes sense to do, then we

[WITNESS PANEL: O'Connor~Felts]

1 would reevaluate. But, today, I don't see a
2 change occurring.

3 Q. Okay. Thank you. And, finally, you spoke
4 about how Newington has performed well with
5 respect to the forced outages industrywide, and
6 that Cogentrix has an even better record in
7 regard to that. Could you explain why you feel
8 Newington has performed well? Is it because
9 it's a new power plant, that type of thing?
10 And do you have any concerns going forward as
11 the power plant ages?

12 A. (Felts) Sure. Newington is a newer facility of
13 more recent design. It was well-designed,
14 which we recognized in our due diligence as
15 something that is important to us. If we find,
16 in our diligence, that there are deficiencies
17 in design, that is certainly a flag for us to
18 think about what changes and the cost
19 associated with those changes that will be
20 necessary to correct those flaws. This plant
21 was well-designed, at least from our
22 determination from our diligence review.

23 The other thing is the plant has been very
24 well maintained, and the turnover rate of

[WITNESS PANEL: O'Connor~Felts]

1 personnel at the plant has been extremely low.
2 In fact, the plant manager was around when the
3 plant was commissioned for operation. So, he
4 has a significant amount of history and
5 knowledge with the facility's design and
6 operational parameters.

7 Over time, as the plant ages, we continue,
8 at Cogentrix, to look for ways to extend the
9 life of facilities by our maintenance,
10 preventative maintenance plans, and we would
11 apply those same principles here.

12 DIR. MUZZEY: Thank you.

13 WITNESS FELTS: You're welcome.

14 DIR. MUZZEY: I'm all set. Thank
15 you.

16 PRESIDING OFCR. WEATHERSBY: So, I
17 have several questions.

18 BY PRESIDING OFCR. WEATHERSBY:

19 Q. Mr. O'Connor, just a moment ago you said
20 something that I hadn't heard before, and that
21 concerned the merger of the Essential Power
22 entities. Could you explain which ones are
23 being planned to merge? And we have --

24 A. (O'Connor) Sure.

[WITNESS PANEL: O'Connor~Felts]

1 Q. We have the post transfer org chart and I think
2 there's a post post org chart.

3 A. (O'Connor) Yes. So, the post post org chart is
4 in development. And it's more around people
5 than it is around, when I say the "org chart",
6 more the people involved. So, the personnel
7 org chart of Essential Power and the personnel
8 org chart of Cogentrix will be merged.

9 The entities you see here are part of a --
10 the loan, and that's not changing. Until we,
11 at some point in time, when the loan matures,
12 we will refinance it, and that structure may
13 change then. But, up until that point, until
14 the loan is refinanced, this org structure,
15 from a legal entity perspective, will stay in
16 place. But the organizational charts of
17 personnel will be put together.

18 We have, as Bill mentioned, almost 80
19 people in Charlotte, and we have about 55
20 people in Princeton. And there's going to be
21 some, you know, redundancies and there's going
22 to be a lot of jobs that are going to change
23 across the platform, and that's what we're
24 going through now. That's what I was referring

1 to.

2 Q. Okay. But there won't be local changes, it's
3 more --

4 A. (O'Connor) None.

5 Q. -- in the management, mid-level changes?

6 A. (O'Connor) That's correct. It's the management
7 of the platform. So, the Cogentrix Charlotte
8 team and the Essential Power Princeton, New
9 Jersey team, there will be job-shuffling going
10 on. No changes at all to any of the operating
11 facilities, including Newington.

12 Q. How much time is left on the loan?

13 A. (O'Connor) The loan matures in 2019, the term
14 loan. And it has a working capital facility, a
15 revolving credit facility, that we need to --
16 which would mature in October of 2017.

17 Q. And the purchase of the entity is, the purchase
18 price, in a sense, is the assumption of that
19 debt. Is there also -- so, there's plenty of
20 debt and access to capital in place, it sounds
21 like. But what about just working capital --

22 A. (O'Connor) Uh-huh.

23 Q. -- and just operational funds?

24 A. (O'Connor) Right.

[WITNESS PANEL: O'Connor~Felts]

1 Q. What's the status there?

2 A. (O'Connor) So, no change from what's gone on
3 over the past, I would say, eight years of the
4 ownership of the Facility by IFM, or even its
5 predecessors. EP Newington generates its own
6 cash flow. So, EP Newington sells power into
7 the market and generates cash. They will use
8 that cash to fund the payroll and the daily
9 operations of the Facility.

10 To the extent that EP Newington requires
11 capital that is not self-generated, it would
12 come from the Essential Power Investments' debt
13 facility, as that's the working capital
14 facility that is available to it, to provide it
15 funds in excess of its cash flow.

16 Q. Okay. Changing subjects slightly. Is FERC
17 approval needed for this transfer? And, if so,
18 what's the status of that?

19 A. (O'Connor) FERC approval is needed. We've
20 applied. We are expecting it any day.

21 Q. So, everything's going smoothly. So, you don't
22 anticipate --

23 A. (O'Connor) We did have one intervenor. And the
24 time of passage for their filing a follow-up --

[WITNESS PANEL: O'Connor~Felts]

1 I guess a follow-up order or complaint has
2 passed. So, we expect our approval, we had, I
3 believe, one question back from the Commission
4 that we've answered, and that was, I believe,
5 about ten days ago. And, so, we expected it
6 early this --earlier this week, and we're still
7 waiting for that final approval.

8 Q. Okay. And do you expect that this transfer of
9 ownership will have any effect at all on the
10 rates charged for energy generated by this
11 Facility? Any effect on the consumer?

12 A. (O'Connor) No. No. We don't, just so that we
13 can -- just so I can clarify, we don't actually
14 sell power to consumers. We sell to the
15 market. So, our power is determined by the
16 market clearing price. So, we sell wholesale,
17 if you will. And, then, the buyers of that
18 power could be your local provider. It could
19 be Eversource, it could be whatever utility it
20 is that buys the power locally and then feeds
21 it to retail.

22 Q. Thank you. Has the Newington facility had any
23 issues that you're aware of complying with its
24 conditions of the Certificate that's been

[WITNESS PANEL: O'Connor~Felts]

1 granted by this Committee earlier? And, if so,
2 are there any outstanding and how will they be
3 addressed?

4 A. (Felts) I'm not aware of any.

5 A. (O'Connor) Neither am I.

6 Q. And, my last question, are there any, on the
7 local level, any operational steps that need to
8 be taken prior to the closing of the plant,
9 such as switchovers of information, you know,
10 technology systems or contracts, personnel?
11 Are there any sort of final steps that still
12 need to be taken? And what are those and
13 what's the time frame?

14 A. (Felts) No. We are ready to go. They will
15 continue to operate the Facility day-to-day
16 from the plant, and the day-to-day gas
17 purchases and power sales will be continued to
18 manage out of the Princeton office, won't
19 change it.

20 PRESIDING OFCR. WEATHERSBY: Michael.

21 BY MR. IACOPINO:

22 Q. I just want to get back to your FERC
23 proceeding --

24 *[Court reporter interruption.]*

[WITNESS PANEL: O'Connor~Felts]

1 MR. IACOPINO: I'm sorry.

2 BY MR. IACOPINO:

3 Q. I wanted to get back to your FERC proceeding
4 for a moment.

5 A. (O'Connor) Uh-huh.

6 Q. You indicated there was "one intervenor". Is
7 that an individual or is it an institutional or
8 government agency?

9 A. (O'Connor) It was a nonprofit entity called --
10 I believe it's Public Citizens. They were
11 representing 600,000, I think was the number of
12 customers, I may get it wrong, but 600,000
13 customers in New England, and they wanted --
14 they didn't complain, they wanted to see more
15 details of the transaction.

16 Q. And were they provided with more detail?

17 A. (O'Connor) They were.

18 Q. And, then, subsequent to that, they have taken
19 no further action?

20 A. (O'Connor) That's correct. They had 21 days
21 from the receipt of the information to file
22 further issues, and that time period passed.

23 Q. One of you, actually, maybe both of you, during
24 the course of your testimony here today, talked

[WITNESS PANEL: O'Connor~Felts]

1 about the benefit that EP Newington has,
2 because it's got dual fuel capacity, and you
3 mentioned the oil use. But what is the present
4 status of your regulatory limits on the use of
5 oil at that Facility?

6 A. (Felts) There's a permit that requires a
7 limitation of the amount of oil you burn in any
8 calendar year, or 12-month period, I think it's
9 calendar year. So, that can't be exceeded.
10 And that hasn't changed, nor will that change.

11 Q. Okay. Do you understand that to be in terms of
12 the amount of oil burned or the amount of days
13 in which you can burn oil?

14 A. (Felts) I think it's the quantity of oil. I
15 would have to go back and check the permit
16 itself. Typically, they're listed in the
17 amount or quantity of fuel.

18 Q. Okay. You were asked by Counsel for the
19 Public, I think this was a question to Mr.
20 O'Connor, if there were any fraud allegations
21 or criminal actions against entities in the
22 Carlyle family of businesses. In the conduct
23 of your due diligence, before entering into
24 this sale, did you determine whether, in the

[WITNESS PANEL: O'Connor~Felts]

1 Essential Power family of businesses, there
2 have been any fraud investigations, complaints,
3 anything along those lines?

4 A. (O'Connor) We did that in legal due diligence,
5 and there were none that were flagged.

6 Q. Okay. Now, what about from the regulatory
7 standpoint? Any major environmental or
8 regulatory actions against any of the entities
9 in the Essential Power family of businesses?

10 A. (O'Connor) None that I'm aware of.

11 A. (Felts) I'm aware of one, but it was prior to
12 the ownership of this current group in 2008,
13 and that was regarding a landfill in
14 Massachusetts. But, again, that was prior to
15 this current group that was involved.

16 Q. Was that a landfill power generation facility,
17 gas -- landfill gas facility?

18 A. (Felts) I don't know the specifics of that, too
19 long ago, and it was resolved. But it was
20 landfill that was coming from one of the
21 facilities of Essential Power.

22 Q. Okay. Then, I guess I have a couple questions
23 about the relationship of Cogentrix with,
24 primarily, Newington. Once this sale goes

[WITNESS PANEL: O'Connor~Felts]

1 through, you have somebody who is ultimately
2 the responsible official, responsible executive
3 for operating Essential Power Newington.
4 Somebody from Cogentrix goes down to Newington,
5 what is the relationship between Cogentrix and
6 that manager? Who has the final say, in terms
7 of what may or may not occur at the Newington
8 facility, from a management perspective?

9 A. (Felts) Well, Cogentrix's approach to managing
10 facilities is collaborative. We take the
11 general manager's input from these facilities,
12 and that, coupled with what we have learned
13 over the years, and between the operations
14 manager at Cogentrix and the asset management
15 manager at Cogentrix and the general manager,
16 those three will come up with collective
17 solutions to problems, and a decision will be
18 arrived at by those three. It won't be arrived
19 at by just one individual.

20 Q. What happens if there's disagreement between
21 the two members from Cogentrix and the plant
22 manager?

23 A. (Felts) That can happen.

24 Q. And who has the final say?

[WITNESS PANEL: O'Connor~Felts]

1 A. (Felts) At the end of the day, if those three
2 folks can't agree on things, then that will
3 move up the chain within Cogentrix for a
4 determination. And, ultimately, our president
5 will get involved, if we can't make the three
6 folks get along.

7 A. (O'Connor) I'd just like to clarify, too. I
8 think one of the things that's important to
9 know is that, on a day-to-day basis, the
10 general manager is running his or her facility
11 with very little involvement from our Charlotte
12 staff. And the Charlotte staff is really
13 there, in Cogentrix, to be a support mechanism.
14 It's the corporate "we're from corporate, we're
15 here to help", really, type of relationship.

16 What Bill's referring to is, if there's a
17 problem, what's unique for the plants we
18 operate is, they -- the plant manager will pick
19 up the phone, call Charlotte, and get a
20 response immediately. Whereas, in other
21 relationships with third parties, the plant
22 manager may call, and it may take time for a
23 response and for teams to be mobilized. That's
24 one of the benefits that we bring.

[WITNESS PANEL: O'Connor~Felts]

1 But, day-to-day, no one from Cogentrix is
2 going to sit in Newington, next to the plant
3 manager, turning dials. The plant manager runs
4 the facility. The Cogentrix support team is in
5 Charlotte, and is available for help, not to
6 operate the plant on a day-to-day basis.

7 Q. There was some discussion during your testimony
8 about water on-site brought up by Counsel for
9 the Public. You indicated that there was water
10 storage on-site. Is that water storage, is
11 that designed for cooling or is that for fire
12 protection?

13 A. (Felts) There's fire protection water on-site
14 and there's also water on-site for the HRSG, or
15 boiler. So, it's water we have treated
16 on-site, so that it's of a purity that can be
17 accepted into the boiler.

18 MR. BROOKS: And, again, if I can
19 just jump in. As we did the site visit, I
20 believe what they showed me was a smaller
21 demineralized water tank, is what you just
22 described, and then a larger city water tank.

23 MR. BISBEE: And could I ask
24 Mr. Felts to indicate what "HRSG" is?

[WITNESS PANEL: O'Connor~Felts]

1 WITNESS FELTS: It's a boiler. It
2 stands for "Heat Recovery Steam Generator".

3 BY MR. IACOPINO:

4 Q. And, along that line, these are GE 7F -- this
5 is a GE 7FA turbine. And you talked about
6 "it's been well-maintained and it's operating
7 well". Is that technology, that 7FA, is that
8 the -- does GE still market and sell that
9 turbine technology?

10 A. (O'Connor) They do.

11 MR. IACOPINO: I don't have any
12 further questions.

13 PRESIDING OFCR. WEATHERSBY: Director
14 Muzzey.

15 DIR. MUZZEY: I have a question in
16 regard to timing of this transaction.

17 WITNESS O'CONNOR: Uh-huh.

18 BY DIR. MUZZEY:

19 Q. Essential Power appears to own a number of
20 different power plants in a number of different
21 states that are part of this transaction. Are
22 you going through similar proceedings, such as
23 this one, in those states as well?

24 A. (O'Connor) No, we're not. This is the only

[WITNESS PANEL: O'Connor~Felts]

1 one.

2 Q. So, what do you see is the timing of this
3 transaction, after today's proceeding?

4 A. (O'Connor) I could almost ask that same
5 question of you.

6 PRESIDING OFCR. WEATHERSBY: Assuming
7 we grant.

8 WITNESS O'CONNOR: Yes.

9 **BY THE WITNESS:**

10 A. (O'Connor) I'll give you some background, just
11 to give you the total timeline here. So, the
12 Purchase and Sale Agreement was signed on
13 February the 1st. And, so, we've been going
14 through all of our federal approvals, the last
15 is the FERC 203 process that we had previously
16 talked about. We expect that any day. And
17 that the last condition precedent to our
18 closing of the transaction is the approval of
19 this Committee to grant the transfer of the
20 Certificate. So, the timing would be within
21 days of, if we are so granted, it would be
22 within days of that order.

23 DIR. MUZZEY: Okay. Thank you.

24 WITNESS O'CONNOR: You're welcome.

[WITNESS PANEL: O'Connor~Felts]

1 PRESIDING OFCR. WEATHERSBY: Any
2 further questions from members of the
3 Committee?

4 MR. DUCLOS: I just have two final
5 questions, really.

6 BY MR. DUCLOS:

7 Q. I just wanted to understand, how do you make a
8 transition from the natural gas to the oil?
9 How's the dual fuel work? Would it be to shut
10 down? Who would do the technical aspects of
11 that transfer?

12 A. (Felts) Well, there are several ways to do
13 that. Some facilities will start up on natural
14 gas, and then they will switch to oil once the
15 gas turbine has reached a certain load
16 condition. Other plants have the ability to
17 consistently and successfully start up on oil
18 without burning any natural gas. This is a
19 plant that has been able to do that. And some
20 of that is a function of the technology itself,
21 which is the GE 7FA technology, which has
22 proven its capability of doing that, and the
23 other is the personnel at the plant have to
24 know what they're doing to accomplish that.

[WITNESS PANEL: O'Connor~Felts]

1 A. (O'Connor) And just to follow on. The machines
2 are actually designed to do that. There's
3 no -- it's just an operational procedure that
4 you go through. But there's no -- there's not
5 days of rework that you have to implement into
6 the technology to do it. It's designed to
7 actually burn either. And it's just how you,
8 as Bill mentioned, you start it one way or you
9 start it another way, but it's not -- it's not
10 a complicated process, when the machine itself
11 has been designed as the GE 7FA has.

12 Q. Thank you. Another question is, if the turbine
13 breaks down for some reason, needs a part, how
14 would you go about, in your network of support,
15 to make that repair?

16 A. (Felts) We have a Field Services group that
17 Cogentrix will deploy. If the type of repair
18 is one that our Field Services group can
19 actually complete on-site, we'll do that.
20 They'll deploy out within hours notice, because
21 it's important to get the plant back up as soon
22 as possible.

23 If it's not a service repair that can be
24 conducted on-site by our group, then we'll

[WITNESS PANEL: O'Connor~Felts]

1 look, typically, to GE or fabricators of GE
2 equipment to see who has a part. We'll also
3 look at the rest of our fleet, to see if there
4 are any plants that have those parts within
5 their storerooms. And, if they do, then it
6 becomes rather easy to swap those out of our
7 storeroom and bring those over. That's the
8 advantage of having a large portfolio, is your
9 ability to swap out parts amongst facilities.

10 Q. So, Cogentrix, out of Charlotte, would kind of
11 manage that type of repair and looking off into
12 their assets, to see if parts are available?

13 A. (Felts) That's correct.

14 MR. DUCLOS: Thank you.

15 PRESIDING OFCR. WEATHERSBY: Any
16 further questions from the Subcommittee for the
17 witnesses?

18 *[No verbal response.]*

19 PRESIDING OFCR. WEATHERSBY: Does
20 anyone have any questions for Counsel for the
21 Public?

22 DIR. MUZZEY: I do.

23 PRESIDING OFCR. WEATHERSBY: Director
24 Muzzey.

1 DIR. MUZZEY: Thank you. Attorney
2 Brooks, in similar proceedings in the past
3 before this Committee, there's been some
4 discussion, some concern as to whether new
5 owners should assume any type of responsibility
6 for the conditions in the original certificate.
7 Is that something that you have any concerns
8 about with this transaction?

9 MR. BROOKS: Thank you for your
10 question. This, obviously, came up in the last
11 Subcommittee hearing that we had for the
12 Granite plant. That was somewhat, I think, a
13 function of both the characteristic of that
14 transfer, and specifically somewhat an artifact
15 of the way that they wrote and presented their
16 information in their Application. In other
17 words, they said "Entity A should receive the
18 Certificate", and then went on to say "because
19 Entity B has financial wherewithal and
20 management", and they really didn't connect
21 those two. And, so, I felt that there had to
22 be a connection between those, and we did it in
23 the way that we were able to agree to.

24 This type of transaction I think

1 fundamentally is different from that. I think
2 that you have seen that this new entity has
3 capabilities. Cogentrix, obviously, is a big
4 part of that. But that's really added on. I
5 think that you heard testimony that, if it
6 functioned the way it functions today, it would
7 be just fine.

8 And, so, really what this is is a
9 much higher up level purchase of an entire
10 portfolio of assets, that happens to be made by
11 someone who has a lot of experience in
12 gas-fired generation. But it could really be a
13 pure financial transaction. It could be
14 Merrill Lynch or Bank of America, whoever,
15 wanting to buy certain assets for their
16 investment portfolio.

17 It really is, I think, fairly removed
18 from the actual operations of the plant, other
19 than, again, the fact that this particular
20 buyer happens to come in wanting to protect its
21 assets, comes in with kind of an army of folks
22 that are ready to jump in and to do what's
23 necessary. So, I think it's a positive.

24 I didn't see, in this case, you know,

1 again, having sat down with them at great
2 length, the need to put those additional
3 restrictions in there. And I do want to be
4 sensitive to the fact that these somewhat
5 complicated business structures are created for
6 a specific reason, and those are to cordon off
7 certain liabilities, to make sure that certain,
8 you know, holding companies have certain
9 responsibilities, the facility has certain
10 responsibilities, and investors are down the
11 line.

12 And, so, I don't want to actually
13 destabilize any of the funding mechanisms and
14 the financing by making artificial connections,
15 when -- if I don't have to do that. So, in
16 other words, I don't have a concern with this,
17 with this transfer.

18 DIR. MUZZEY: Okay. Thank you very
19 much.

20 MR. BROOKS: Thanks.

21 PRESIDING OFCR. WEATHERSBY: Any
22 further questions from the Subcommittee?

23 *[No verbal response.]*

24 PRESIDING OFCR. WEATHERSBY: Mr.

1 Brooks, I understand you don't have any
2 witnesses. Would you like to make any further
3 statement or argument?

4 MR. BROOKS: I think, actually, that
5 Director Muzzey's question helped me flesh out
6 some of what I would have said anyway. I do
7 think that it was a good process to go through
8 to have them come in and to show exactly what
9 was going on.

10 I think that, generally, this level
11 of transaction, again, if it were just the
12 statute that you were looking at, they could
13 legitimately raise a question as to whether
14 they needed to come before the SEC at all.
15 They have to, because the Certificate says that
16 they do, and they agreed to do it.

17 But, that being the case, I do think
18 it's removed enough that we don't need to seek
19 additional conditions. But I do also think
20 that I have seen a great deal of information
21 through the site visit and through the meetings
22 and through the testimony that shows me that,
23 if anything, this transfer is going to be a net
24 positive for this Facility in Newington.

1 PRESIDING OFCR. WEATHERSBY: Okay.

2 Thank you. Would the Joint Applicants like to
3 be heard by way of a closing?

4 MR. BISBEE: Not really -- excuse me,
5 not really a closing, but just one minute to
6 thank you to all concerned here. Allen has
7 been great to work with. We've been open with
8 him, and he's been receptive to the information
9 that we've provided. And I thank the Committee
10 for its attention this morning. I couldn't
11 present a better summary than has already been
12 provided to you. Thank you.

13 PRESIDING OFCR. WEATHERSBY: Thank
14 you. So, there's no further evidence for the
15 Subcommittee. Is the Subcommittee interested
16 in proceeding to deliberations?

17 *[Court reporter interjection.]*

18 PRESIDING OFCR. WEATHERSBY: Oh, take
19 a break?

20 MR. PATNAUDE: Yes.

21 PRESIDING OFCR. WEATHERSBY: Okay.
22 Why don't we break for ten minutes, okay,
23 Steve?

24 MR. PATNAUDE: Yes, that's fine.

[DELIBERATIONS]

1 PRESIDING OFCR. WEATHERSBY: For ten
2 minutes, and then we'll come back and start
3 deliberations.

4 *(Recess taken at 10:39 a.m. and*
5 *the hearing resumed at 10:57*
6 *a.m.)*

7 PRESIDING OFCR. WEATHERSBY: Okay.
8 Back on the record. Thank you for the break.

9 I'd like to make one correction to
10 what I started off with here this morning. In
11 my opening remarks, I had indicated that, "on
12 March 30, 2016, IFM Global Infrastructure Fund
13 and Nautilus Generation, LLC, had filed the
14 Joint Petition with this Committee", and the
15 actual date was February 29th, 2016. So, just
16 correct that for the record.

D E L I B E R A T I O N S

17 PRESIDING OFCR. WEATHERSBY: And, as
18 we begin our deliberative proceeding here, I'd
19 like to just review the analysis that we will
20 take.
21

22 To approve a transfer in ownership,
23 the proposed owner must demonstrate by a
24 preponderance of the evidence that it possesses

[DELIBERATIONS]

1 the adequate financial, managerial, and
2 technical capabilities to assure that the
3 conditions of the Certificate are continuously
4 met. That's a requirement, a statutory
5 requirement.

6 We also have administrative rules
7 that provide us guidance. And those are New
8 Hampshire Code of Administrative Rules, Site
9 301.13, concerning the financial capability.
10 When determining whether the applicant has the
11 financial capability to construct and operate a
12 facility, the Committee is required to consider
13 the following: (1) The applicant's experience
14 in securing funding to construct and operate
15 energy facilities similar to the proposed
16 facility; (2) the experience and expertise of
17 the applicant and its advisors, to the extent
18 the applicant is relying on advisors; (3) the
19 applicant's statements of current and *pro forma*
20 assets and liabilities; and (4) financial
21 commitments the applicant has obtained or made
22 in support of construction and operation of the
23 proposed facility.

24 When determining whether the

[DELIBERATIONS]

1 applicant for a Certificate of Site and
2 Facility has the technical capability to
3 construct and operate the facility, the
4 Committee is required to consider the
5 following: (1) The applicant's experience in
6 designing, constructing, and operating energy
7 facilities similar to the proposed facility;
8 and (2) the experience and expertise of any
9 conductors or consultants engaged or to be
10 engaged by the applicant to provide technical
11 support for the construction and operation of
12 the proposed facility, if known at the time.

13 And, finally, when determining
14 whether an applicant for a Certificate of Site
15 and Facility has the managerial capability to
16 construct and operate the facility, the
17 Committee is required to consider the
18 following: The applicant's experience in
19 managing the construction and operation of
20 energy facilities similar to the proposed
21 facility, was number (1); and number (2) the
22 experience and expertise of any contractors or
23 consultants engaged or to be engaged by the
24 applicant to provide managerial support for the

[DELIBERATIONS]

1 construction and operation of the proposed
2 facility, if known at the time.

3 Although those regulations address
4 requirements that apply specifically to the
5 applicants who seek Certificate for Site and
6 Facility, those regulations provide valuable
7 guidance for determining Nautilus's financial,
8 managerial, technical capability to continue
9 operation of the Facility in accordance with
10 its Certificate.

11 Does anyone on the Subcommittee have
12 a motion or wish to begin our deliberative
13 discussions?

14 Director Muzzey.

15 DIR. MUZZEY: Thank you. And thank
16 you for reviewing those standards of review for
17 us and reminding us of that guidance.

18 Based on the information provided in
19 the Application, the prefled testimony, as
20 amended today, as well as the verbal testimony
21 we heard today, the comments of Attorney
22 Brooks, and as well as the plant's existing
23 record of operation, I would make a motion
24 that, following acquisition by Nautilus, EP

[DELIBERATIONS]

1 Newington will continue to have the adequate
2 financial, managerial, and technical
3 capabilities in order to ensure its continued
4 compliance with all the terms and conditions of
5 its original Certificate issued under Docket
6 Number 98-01.

7 MR. IACOPINO: So, your motion is to
8 grant the relief requested?

9 DIR. MUZZEY: Yes, it is. And to
10 grant the relief requested.

11 PRESIDING OFCR. WEATHERSBY: Is there
12 a second?

13 MR. DUCLOS: Second that motion.

14 PRESIDING OFCR. WEATHERSBY: Any
15 further discussion?

16 *[No verbal response.]*

17 PRESIDING OFCR. WEATHERSBY: I would
18 just concur that I think the record, written
19 record and the oral record, is pretty
20 compelling that the Applicant has the
21 financial, technical, and managerial capacity.
22 And that this ownership change is taking effect
23 so many levels above the -- is really corporate
24 ownership change several levels above where the

[DELIBERATIONS]

1 actually Facility is owned, that there's really
2 very little effect on the Facility. If
3 anything, I think there's a great benefit,
4 given particularly Cogentrix's experience.

5 So, I would -- I think it's going to
6 be -- I think it's definitely good to grant the
7 relief requested.

8 I also would just note for the record
9 that only one comment has been received in this
10 docket, and that was the Town of Newington.
11 And they are supportive of the ownership
12 transfer as well.

13 So, we have a motion and a second to
14 grant the relief requested, to approve the
15 transfer of ownership. All in favor?

16 DIR. MUZZEY: Aye.

17 MR. DUCLOS: Aye.

18 PRESIDING OFCR. WEATHERSBY: Aye.

19 Unanimous approval.

20 MR. IACOPINO: Madam Chair?

21 PRESIDING OFCR. WEATHERSBY: Yes.

22 MR. IACOPINO: I would point out that
23 there's been a Jointly Proposed Order that has
24 been provided to the Committee by the Applicant

[DELIBERATIONS]

1 and Counsel for the Public. Is it the
2 intention of the Committee to deliberate on
3 whether or not to adopt that order as the Order
4 of the Subcommittee?

5 PRESIDING OFCR. WEATHERSBY: Yes,
6 that's our intention. Does anyone like to make
7 a motion or deliberate concerning whether we
8 should adopt the Proposed Order?

9 Director Muzzey.

10 DIR. MUZZEY: I would ask of Attorney
11 Iacopino, our counsel, have you had an
12 opportunity to review this drafted Order and
13 did you have any questions or concerns with the
14 material?

15 MR. IACOPINO: I have had the
16 opportunity to fully review the proposed order,
17 the Jointly Proposed Order. There are a couple
18 of extremely minor tweaks, with respect to a
19 couple of instances of where there's some
20 parentheses that have to be removed, there's a
21 couple of style changes on the first page. But
22 the substance of the Order is substantially
23 similar, if not very close, to exactly what we
24 would probably write, based upon your prior

[DELIBERATIONS]

1 ruling in this case.

2 And, so, as Counsel to the Committee,
3 I have no problem with the Jointly Proposed
4 Order, given those small stylistic changes that
5 we have to make, and would recommend -- if
6 you're asking for a recommendation? I would
7 recommend that you authorize the use of that
8 Jointly Proposed Order -- or, I'm sorry, the
9 adoption of the Jointly Proposed Order.

10 PRESIDING OFCR. WEATHERSBY: Director
11 Muzzey.

12 DIR. MUZZEY: Thank you. And I would
13 note that the Order not only authorizes the
14 transfer, but also notes that any changes --
15 future changes in ownership will require the
16 approval of this Committee, and that all the
17 terms and conditions of the Certificate
18 originally issued remain in full force and
19 effect as well. So, those were some of my
20 concerns, and I see they're included here.

21 So, I would make a motion that, with
22 those minor changes that Attorney Iacopino just
23 discussed, for the Committee to adopt this
24 Jointly Proposed Decision and Order as our

[DELIBERATIONS]

1 language.

2 PRESIDING OFCR. WEATHERSBY: And,
3 Director Muzzey, your motion refers to the
4 Draft Order of June 1, 2016?

5 DIR. MUZZEY: Correct. The draft
6 that we received today.

7 PRESIDING OFCR. WEATHERSBY: So, we
8 have a motion to adopt this Proposed Decision,
9 Jointly Proposed Decision and Order Approving
10 Transfer of Ownership Interests, dated June 1,
11 2016, with the stylistic changes. Is there a
12 second?

13 MR. DUCLOS: I guess I would note at
14 this point is that I really don't have a
15 problem using this as the boiler for a
16 Committee's order. However, I think that we
17 should make the stylistic changes, and, if
18 we're going to approve an order, vote on what
19 we're going to approve, that would be my
20 preference.

21 DIR. MUZZEY: So, it's my
22 understanding you would like to sort of read
23 into the record what those stylistic changes
24 are?

[DELIBERATIONS]

1 MR. DUCLOS: Yes. Not knowing them
2 specifically, it would be hard for me to cast a
3 vote on it. That's correct.

4 PRESIDING OFCR. WEATHERSBY: Attorney
5 Iacopino, are you in a position where you could
6 say those changes that you believe should be
7 made?

8 MR. IACOPINO: Yes. I can do that.
9 The first page on the draft that you received
10 today would be eliminated, other than the title
11 up at the top, because the style that we've
12 been using under the last two chairmans of the
13 Site Evaluation Committee has -- we have not
14 used the style where you have sort of the
15 little description, followed by the
16 appearances. So, that is purely a stylistic
17 change. And, so, what would happen is, after
18 the title "Jointly Proposed Decision and Order
19 Approving Transfer of Ownership Interests in
20 Essential Power Newington, LLC", you would move
21 right onto the part indicating, excuse me,
22 "Introduction".

23 Then, if you turn to Page -- well,
24 obviously, it would include the two redline

[DELIBERATIONS]

1 changes that the Parties -- yes, the Parties
2 made to this, which are on Page 13, changing
3 those things.

4 There was also, I may have been
5 looking at the prior draft, but there was also
6 a couple of parentheticals that looks like they
7 have been removed in this draft. There was
8 some parentheses around certain --

9 MR. BROOKS: There used to be some on
10 Page 6. I don't know if they have been removed
11 yet.

12 MR. IACOPINO: Yes, it looks like
13 they have been removed in the redline draft.
14 I'm sorry. No, they're still there. And those
15 parentheses would be removed.

16 PRESIDING OFCR. WEATHERSBY: And
17 where are you, Michael?

18 MR. IACOPINO: On Page 6. For some
19 reason, there's a parentheses just before the
20 sentence that starts with "The prehearing
21 conference was held on May 18th." Those
22 parentheses would be removed.

23 Ms. Monroe has also pointed out to me
24 a non-gender-neutral reference with the -- she

[DELIBERATIONS]

1 might have to refresh my recollection on the
2 page?

3 ADMINISTRATOR MONROE: Page 10.

4 MR. IACOPINO: On Page 10, where the
5 word "manned", m-a-n-n-e-d, would be changed to
6 the word "staffed".

7 And I think that is pretty much the
8 changes. They're not major.

9 Was there any other that you saw,
10 Ms. Monroe?

11 ADMINISTRATOR MONROE: Just adding a
12 signature block for the Subcommittee members.

13 MR. IACOPINO: Right. We would add a
14 signature block for you all to sign on.

15 Other than that, as I indicated
16 before, this Order is not much different than
17 what you would have gotten from me, if this had
18 not been proposed and you had voted the way you
19 had on your first motion.

20 MR. DUCLOS: And I believe the only
21 other change that was made by the Parties, on
22 Page 10, it wasn't written into the record.

23 And, with those comments in the
24 record, I would second the motion that's

[DELIBERATIONS]

1 currently in front of the Committee.

2 PRESIDING OFCR. WEATHERSBY: Okay.

3 All those in favor of the motion to adopt this
4 Proposed Decision, Proposed Order, with those
5 stylistic changes, say "aye"?

6 DIR. MUZZEY: Aye.

7 PRESIDING OFCR. WEATHERSBY: Aye.

8 MR. DUCLOS: Aye.

9 PRESIDING OFCR. WEATHERSBY: Unani-
10 mous approval.

11 Okay. So, having no further
12 business, we will adjourn the proceeding.
13 Thank you.

14 **(Whereupon the deliberations and**
15 **hearing was adjourned at 11:11**
16 **a.m.)**

17

18

19

20

21

22

23

24