

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

January 24, 2011 - 9:14 a.m.  
Concord, New Hampshire

DAY 1  
MORNING SESSION ONLY

NHPUC FEB11'11 AM11:45

RE: DE 10-195  
PUBLIC SERVICE CO. OF NEW HAMPSHIRE:  
Petition for Approval of Power  
Purchase Agreement between PSNH  
and Laidlaw Berlin BioPower, LLC.

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Clifton C. Below  
Commissioner Amy L. Ignatius  
  
Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:  
Robert A. Bersak, Esq.  
  
Reptg. the City of Berlin:  
Christopher Boldt, Esq. (Donahue, Tucker...)  
Kerriann Roman, Esq. (Donahue, Tucker...)  
  
Reptg. Clean Power Development:  
James T. Rodier, Esq.  
  
Reptg. Bridgewater Power, Pinetree Power,  
Pinetree Power-Tamworth, DG Whitefield Power,  
Springfield Power & IndeckEnergy-Alexandria:  
David J. Shulock, Esq. (Brown, Olson & Gould)  
David K. Wiesner, Esq. (Brown, Olson & Gould)  
  
Reptg. Edrest Properties, LLC:  
Jonathan Edwards

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

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:  
Meredith Hatfield, Esq., Consumer Advocate  
Kenneth E. Traum, Asst. Consumer Advocate  
Office of Consumer Advocate

Reptg. PUC Staff:  
Suzanne G. Amidon, Esq.  
Edward N. Damon, Esq.  
Thomas C. Frantz, Director/Electric Div.  
George R. McCluskey, Electric Division

1	I N D E X	
2		PAGE NO.
3	STATEMENTS RE: CONCORD STEAM'S NOTICE OF WITHDRAWAL BY:	
4		
5	Ms. Amidon	16
6	Ms. Hatfield	17, 18
7	Mr. Shulock	17
8	Mr. Edwards	19
9	Mr. Boldt	19
10	Mr. Bersak	21
11	STATEMENTS RE: CITY OF BERLIN MOTION FOR CONFIDENTIALITY BY:	
12		
13	Mr. Boldt	24, 36
14	Mr. Shulock	30
15	Ms. Hatfield	32, 39
16	Ms. Amidon	33
17	Mr. Bersak	34
18	STATEMENTS RE: OCA MOTION TO STRIKE BY:	
19		
20	Ms. Hatfield	40, 49
21	Ms. Amidon	42, 49
22	Mr. Shulock	43
23	Mr. Bersak	44
24	Mr. Boldt	47
25	STATEMENT BY MR. RODIER	51
26	WITNESS PANEL: LISA K. SHAPIRO	
27	GARY A. LONG	
28	TERRANCE J. LARGE	
29	RICHARD C. LABRECQUE	
30	Direct examination by Mr. Bersak	64
31	Cross-examination by Mr. Boldt	77
32	Cross-examination by Mr. Edwards	95
33	Cross-examination by Mr. Shulock	113
34		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
PSNH 1	PSNH Petition for Approval of Power Purchase Agreement Between PSNH and Laidlaw Berlin BioPower	premarked
PSNH 2	PSNH Power Purchase Agreement	premarked
PSNH 3	Testimony of Gary A. Long	premarked
PSNH 4	Testimony of Terrance J. Large	premarked
PSNH 5	Testimony of Richard C. Labrecque	premarked
PSNH 6	Testimony of Dr. Lisa K. Shapiro	premarked
PSNH 7	Rebuttal Testimony of Gary A. Long, Terrance J. Large, and Richard C. Labrecque	premarked
PSNH 8	Rebuttal Testimony of Dr. Lisa K. Shapiro	premarked
PSNH 9	Document entitled "Changes to PPA Offered by Laidlaw"	premarked
PSNH 10	Berlin Daily Sun article "Green company interested in locating on former mill site"	premarked
	* * *	
GES 1	Direct Testimony of George E. Sansoucy	premarked
GES 2	Resumé of George E. Sansoucy	premarked
GES 3	Rebuttal Testimony of George E. Sansoucy	premarked
	* * *	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S (continued)

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
IPP 1	PSNH Response to OCA 1-3	premarked
IPP 2	PSNH Response to OCA 2-1	premarked
IPP 3	PSNH Response to Staff 01-019	premarked
IPP 4	PSNH Response to Staff 3-12	premarked
IPP 5	PSNH Response to Staff 06-003	premarked
IPP 6	PSNH Response to IPP 04-007	premarked
IPP 7	PSNH Response to IPP 2-18	premarked
IPP 8	PSNH Response to IPP 2-20	premarked
IPP 9	PSNH Response to IPP 2-71	premarked
IPP 10	PSNH Response to Staff 1-39	premarked
IPP 11	PSNH Response to IPP 2-17	premarked
IPP 12	PSNH Response to IPP 3-007-RV-01	premarked
IPP 13	PSNH Response to IPP 03-008-RV-01	premarked
IPP 14	PSNH Response to IPP 03-012	premarked
IPP 15	PSNH Response to IPP 2-9	premarked
IPP 16	PSNH Response to IPP 3-10	premarked
IPP 17	PSNH Response to Staff 1-8	premarked
IPP 18	PSNH Response to CSC 01-008	premarked
IPP 19	PSNH Response to IPP 2-40	premarked

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
IPP 20	Renewable Energy Portfolio Standard Biomass Eligibility Revisions Overview Massachusetts Dept. of Energy Resources (09-17-10)	premarked
IPP 21	Comments re: Proposed Draft Regulation 225 CMR 14.00 Renewable Energy Portfolio Standard Class I on behalf of PSNH (10-21-10)	premarked
IPP 22	67 FR 51516, Standard of Review for Proposed changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities	premarked
IPP 23	PSNH Response to Staff 3-18	premarked
IPP 24	PSNH Response to IPP 6-26	premarked
IPP 25	PSNH Response to Staff 1-032 RV-01 Attachments 1 and 2	premarked
IPP 26	OCA Response to IPP 1-1	premarked
IPP 27	OCA Response to IPP 1-2	premarked
IPP 28	Staff Response to IPP-1	premarked
IPP 29	Staff Response to IPP-2	premarked
IPP 30	Staff Response to IPP-3	premarked

\* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S (continued)

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
OCA 1P	Revised Public Prefiled Direct Testimony of Kenneth E. Traum	premarked
OCA 1C	Revised CONFIDENTIAL Prefiled Direct Testimony of Kenneth E. Traum	premarked
OCA 2	PSNH Response to Staff 01-022	premarked
OCA 3P	PSNH Public Response to Staff 01-006 in DE 10-257	premarked
OCA 3C	PSNH CONFIDENTIAL Response to Staff 01-006 in DE 10-257	premarked
OCA 4	PSNH Response to Staff 01-019	premarked
OCA 5P	PSNH Public Response to Staff 05-004	premarked
OCA 5C	PSNH CONFIDENTIAL Response to Staff 05-004	premarked
	* * *	
Staff 1	Testimony of George R. McCluskey	premarked
Staff 1C	Testimony of George R. McCluskey with CONFIDENTIAL attachment	premarked
Staff 2	Testimony of Thomas C. Frantz	premarked
Staff 3	Attachment to RCL-1 of PSNH's filing - Labrecque testimony	premarked
Staff 4	Response to Staff Data Request 1-10	premarked

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S (continued)

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
Staff 5	Response to Staff Data Request 3-10	premarked
Staff 6	Response to Staff Data Request 2-5	premarked
Staff 7	Response to Staff Data Request 1-11	premarked
Staff 8	Response to Staff Data Request 6-2	premarked
Staff 9	Staff Hypothetical Part 1	premarked
Staff 10	Summit Blue Consulting LLC document	premarked
Staff 11	Response to Staff Data Request 1-22	premarked

## P R O C E E D I N G

1  
2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the hearing in Docket DE 10-195. On  
4 July 26, 2010, Public Service Company of New Hampshire  
5 filed a Petition for Approval of a Power Purchase  
6 Agreement with Laidlaw Berlin BioPower for the Acquisition  
7 of Energy, Capacity, and Renewable Energy Certificates.  
8 An order of notice was issued on September 1 setting a  
9 prehearing conference that was held on September 29. We  
10 issued a procedural order on October 15, and, on  
11 November 17, issued a secretarial letter setting the  
12 hearing for this week. In the interim, there have been  
13 numerous procedural motions and objections, for the most  
14 part that have been resolved.

15 What we're going to do today is first  
16 I'll take appearances, then we'll provide an opportunity  
17 for public comment, if there's anyone here who would like  
18 to make a public comment. There's at least a couple of  
19 outstanding procedural issues that we need to address.  
20 And, then, we'll go from there. I also want to note that  
21 we have cleared the calendar for Wednesday. So, Wednesday  
22 will be available for hearings, if we're not finished  
23 within the next two days.

24 So, with that, I'll start with the

1 Petitioner. And, at this point, I just want appearances  
2 from the parties that have been granted intervention.

3 MR. BERSAK: Good morning,  
4 Commissioners. For Public Service Company of New  
5 Hampshire, I'm Robert Bersak, its Assistant General  
6 Counsel.

7 CHAIRMAN GETZ: Good morning.

8 MR. BOLDT: For the City of Berlin,  
9 Chris Boldt and Kerri Roman, of Donahue, Tucker &  
10 Ciandella.

11 CHAIRMAN GETZ: Good morning.

12 MR. EDWARDS: For Edrest Properties,  
13 Jonathan Edwards.

14 CHAIRMAN GETZ: Good morning.

15 MR. SHULOCK: I'm David Shulock, from  
16 the firm of Brown, Olson & Gould, and with me is David K.  
17 Wiesner of our firm. And, we represent Bridgewater Power  
18 Company, LP, Pinetree Power, Inc., Pinetree  
19 Power-Tamworth, Inc., D.G. Whitefield, LLC, which does  
20 business as Whitefield Power & Light Company, and  
21 Indeck-Alexandria, LLC, commonly referred to as the  
22 "Wood-Fired IPPs".

23 And, at the outset, and as a preliminary  
24 matter, I'd like to make an objection and a reservation of

1 rights on the record. On December 13th, 2010, the  
2 Wood-Fired IPPs filed a Motion to Dismiss, asserting,  
3 among other things, that PSNH had submitted a contract to  
4 this Commission for approval that exceeds the Commission's  
5 jurisdiction under 362-F:9 to approve. The motion stated  
6 that PSNH's obligation to purchase renewable energy  
7 certificates for New Hampshire Class I RECs under 362-F  
8 does not extend beyond the year 2025 as a matter of law.  
9 And, the contract that is the subject of this hearing  
10 provides for the purchase of RECs through 2034. And,  
11 therefore, the Commission lacks the authority and the  
12 power to approve PSNH to enter into that contract and to  
13 allow for cost recovery.

14 CHAIRMAN GETZ: Okay. So, Mr. Shulock,  
15 the same motion that we've already ruled on?

16 MR. SHULOCK: Yes. Yes.

17 CHAIRMAN GETZ: Okay. Well, let's --  
18 what I said at the beginning was, first, we're going to  
19 take appearances, then we're going to have public comment,  
20 then we'll deal with any procedural issues. So, let's get  
21 the appearances on the record, and then we'll address your  
22 objection or your reservations of rights or whatever it  
23 may be at the appropriate time.

24 MR. SHULOCK: Fine. And, actually, I

1 want to take another 20 seconds, if you'd like? Okay. We  
2 understand that the Commission has said that it can place  
3 conditions on the contract, and we agree with that. To  
4 the extent that the Commission may place conditions on the  
5 contract in the public interest, we believe that's  
6 different than placing conditions on the contract to bring  
7 it into the Commission's jurisdiction and make it a  
8 jurisdictional contract. And, in fact, you haven't  
9 imposed any conditions. And, we understand that. We  
10 simply want it clear on the record that our participation  
11 here today is not intended as a waiver of our rights to  
12 pursue the legal claims that we've made in that Motion to  
13 Dismiss, and a Motion for Rehearing or otherwise.

14 CHAIRMAN GETZ: Your position is noted.

15 MR. RODIER: Good morning, Mr. Chairman.  
16 Jim Rodier, for Clean Power Development. And, at an  
17 appropriate time, I've just got a very brief two sentence  
18 statement that I'd like to make as a preliminary matter.

19 CHAIRMAN GETZ: Okay. Thank you.

20 MS. HATFIELD: Good morning,  
21 Commissioners. Meredith Hatfield, for the Office of  
22 Consumer Advocate, on behalf of residential ratepayers.  
23 And, with me for the Office, as a witness in this  
24 proceeding, is Ken Traum.

1 CHAIRMAN GETZ: Good morning.

2 MS. AMIDON: Good morning,  
3 Commissioners. Suzanne Amidon, for Commission Staff.  
4 With me today is George McCluskey, an Analyst with the  
5 Electric Division and a witness in this docket, he's to my  
6 immediate left; to his left is Tom Frantz, the Director of  
7 the Electric Division and a witness in this docket; and to  
8 Mr. Frantz's left is Edward Damon, who is the Director of  
9 the Legal Division, and who has worked with me in this  
10 docket. Good morning.

11 CHAIRMAN GETZ: Okay. Good morning.  
12 Well, let's turn to opportunity for public comment. I  
13 have one public statement form indicating an interest in  
14 speaking, Mr. Makaitis. Sir. If you could come up, it  
15 might be easier to come to a microphone so you can be  
16 heard, and the court stenographer will be able to hear.  
17 If you want to use that one, that's fine, too.

18 MR. MAKAITIS: Thank you. I'm Max  
19 Makaitis -- is this thing on? Yes. And, I am the Housing  
20 and Economic Development Director for Tri-County Community  
21 Action Program. I have submitted, on behalf of Tri-County  
22 CAP, a written letter of support supporting the approval  
23 of this project, and essentially supporting it from the  
24 overall economic development and New Hampshire economy

1 perspective. I think the essence of my letter is, and  
2 which has been submitted, is that buying \$25 million of  
3 biomass, since the raw material is grown in New Hampshire,  
4 provides New Hampshire with an economic increase in jobs  
5 and development and, through a multiplier effect, has it  
6 up to three times, that's a \$75 million effect.

7 On the alternative, if we buy natural  
8 gas or oil or coal or propane, then we are sending money  
9 out of state and we are losing the economic benefit.

10 So that the essence of my letter is  
11 that, even if we wind up paying more for biomass, the  
12 economic benefit to New Hampshire is substantially greater  
13 by multiples than it would be if we continue to buy the  
14 lowest, cheapest form of energy and send the money out of  
15 state. For example, if we buy \$25 million of biomass,  
16 that works within New Hampshire and increases New  
17 Hampshire's economy. If we buy coal, that goes -- that  
18 money goes out of state, and we lose that wealth, we burn  
19 the coal, and we really don't have something to show for  
20 it. We're creating jobs in other entities, in foreign  
21 countries.

22 So that the essence of my letter, from  
23 an economic perspective, is that biomass, being the only  
24 raw material, energy raw material that New Hampshire

1 poses, should be approved and should be emphasized in  
2 terms of what we do for renewable energy. And, obviously,  
3 a benefit of renewable energy being a better and cleaner  
4 environment.

5 And, that's the essence of my letter. I  
6 don't want to go into it, take a lot of time of this body  
7 right now. I do want to say though that Councilor Burton  
8 gave me also some letters to deliver, which I did, in  
9 support of the Project. And, we hope, for the benefit of  
10 the North Country, where we have substantial unemployment  
11 now because of the mill closure, and where people have a  
12 problem, in essence, not worrying about the amount of  
13 their electric bill, but actually paying their electric  
14 bill. But we hope this would be approved, because it is  
15 in the best interest of the entire economy of New  
16 Hampshire. Thank you very much.

17 CHAIRMAN GETZ: Thank you, sir. Is  
18 there anyone else who would like to make a public comment  
19 this morning?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Hearing nothing,  
22 then we'll move on to dealing with the outstanding  
23 procedural issues. And, the first item I'll note is the  
24 Notice of Withdrawal that was filed by Concord Steam.

1 And, we issued a letter on January 21 saying that today  
2 we'll provide an opportunity for the parties to give any  
3 reason why they think we should not treat the Concord  
4 Steam Notice of Withdrawal in the same manner that we  
5 treated the Laidlaw withdrawal in this proceeding.

6 So, let's -- does anyone have -- that  
7 would like to respond to that issue? Ms. Amidon.

8 MS. AMIDON: Yes. I just wanted to  
9 observe that one of the distinctions between Concord Steam  
10 and Laidlaw's motion or request or Notice of Withdrawal is  
11 the timing. As you know, this was filed just a few days  
12 before the hearing, when there was still an ongoing  
13 discovery dispute with PSNH over Motions to Compel. And,  
14 so, I think that is a difference.

15 Secondly, Concord Steam is a regulated  
16 utility. Are they a necessary party in this docket? I  
17 think that's for the Commission to decide. But the only  
18 other point I was going to make is, Concord Steam was the  
19 only entity that offered information on wood supply and  
20 wood pricing issues. And, if the Commission determines  
21 that those -- that information is necessary for you to  
22 make a determination under RSA 362-F:9, on whether this  
23 contract is in the public interest, you should consider  
24 whether you would want to keep them in the docket for that

1 purpose.

2 CHAIRMAN GETZ: Thank you. Ms.  
3 Hatfield.

4 MS. HATFIELD: Thank you, Mr. Chairman.  
5 I agree with both points that Attorney Amidon raised.  
6 Concord Steam certainly brought a different perspective  
7 about wood procurement. And, they argued actually quite  
8 strongly on their own behalf that they needed to be in the  
9 docket to protect the interest of their own ratepayers,  
10 most of which are not residential ratepayers, I would  
11 note.

12 It's also unfortunate, I don't believe  
13 Concord Steam is here today. But we certainly are  
14 interested to know why the Company decided to withdraw so  
15 late in the process, when we were so close to hearing, and  
16 we're very disappointed that they did withdraw. We do  
17 think that some of the information that they put into the  
18 record of the case will be important to the Commission's  
19 decision. Thank you.

20 CHAIRMAN GETZ: Anyone else? Mr.  
21 Shulock.

22 MR. SHULOCK: We don't disagree with the  
23 points that were raised by the other two, by Staff and  
24 OCA. But, as parties that interact with the Commission,

1 what we would like to see is the development of some clear  
2 guidelines for things that --

3 (Court reporter interruption.)

4 CHAIRMAN GETZ: Well, I think you just  
5 need to be closer to the microphone is the issue.

6 MR. SHULOCK: As parties who practice  
7 before the Commission, we're simply looking for a clear  
8 exposition of the standards that the Commission will apply  
9 as parties enter and leave the docket. We think that it  
10 calls into question the integrity of dockets before the  
11 Commission when parties can simply jump in and jump out.  
12 And, this isn't the first party to have done that in this  
13 proceeding. So, we would simply look for that exposition  
14 in your order.

15 CHAIRMAN GETZ: Ms. Hatfield.

16 MS. HATFIELD: Thank you, Mr. Chairman.  
17 One practical issue that I should have raised is that some  
18 parties in their rebuttal responded to Concord Steam's  
19 testimony. So, if they -- if they are allowed to  
20 withdraw, and therefore their testimony is not in the  
21 record, I think, as we go through the hearing, we might  
22 want to make sure that we strike rebuttal that responds to  
23 their points, if it's appropriate. It may be that their  
24 response and a rebuttal is broad enough that it covers

1 issues raised by several parties, but something that we  
2 were mindful of in preparing for today.

3 CHAIRMAN GETZ: Thank you. Anyone else?  
4 Mr. Edwards.

5 MR. EDWARDS: I would agree with what  
6 everyone else has mentioned here, in particular, about  
7 timing of this. But I think probably the biggest issue I  
8 would have with this is that we've been really struggling  
9 with a benchmark as to what market price has been all  
10 along with this PPA. And, here we have Concord Steam that  
11 has come up with probably, you know, a very current PPA on  
12 a greenfield project that's providing us with a rate  
13 that's 18 percent lower than the PPA we're talking about  
14 on the Laidlaw PPA.

15 My concern being that, if their  
16 intervening status is thrown out, that that comparison is  
17 also thrown out, and we don't have as much to go on.

18 CHAIRMAN GETZ: Thank you. Anyone else?  
19 Mr. Boldt, did you --

20 MR. BOLDT: Or, I'll -- I can wait after  
21 PSNH's. I didn't mean to take Bob's thunder.

22 MR. BERSAK: Go ahead.

23 MR. BOLDT: From the standpoint of the  
24 City, we would object to the withdrawal not being granted

1 and the testimony not being stricken. Any party in a  
2 lawsuit has the right to decide they don't want to play  
3 anymore. Remember, Concord Steam was faced with a very  
4 strong challenge to its standing that raised some  
5 significant and serious issues before this Board. We  
6 would suggest that they have the right to withdraw, they  
7 should be granted that withdrawal, and their testimony,  
8 since those witnesses are not here to be crossed, and we  
9 have strong disagreement with a great deal of that  
10 testimony, because that opportunity of cross-examination  
11 is not available to us, it is a due process issue that  
12 they need to be stricken. There are portions of the  
13 rebuttal testimony of various parties that will quote a  
14 segment of the Concord Steam's witnesses' testimony, so  
15 that you are at least given the context in which that  
16 rebuttal testimony, which is of merit to the general  
17 issues before this Board, can be considered. You can  
18 strike the Concord Steam testimony, keep the rebuttal  
19 testimony, and still have the flavor of what is important  
20 on the issues of this case.

21 Accordingly, we ask you to strike and we  
22 ask you to grant the motion and to strike the testimony.

23 CHAIRMAN GETZ: Okay. Thank you. Mr.  
24 Bersak.

1 MR. BERSAK: Thank you, Mr. Chairman.  
2 Concord Steam was a voluntary party to this proceeding.  
3 They were not a mandatory party. And, this Commission has  
4 a long-standing precedent that people who or entities or  
5 parties that come in voluntarily aren't forced to remain.  
6 This docket clearly could have gone forward without  
7 Concord Steam ever intervening, and it will continue  
8 without them being here. The fact that they're a utility  
9 is coincidental. Their utility status has had nothing to  
10 do with their grant of intervenor status in this docket.

11 Not only is there past precedent, you  
12 know, from years of practice before the Commission, where  
13 the Commission has allowed parties that are not mandatory  
14 parties to withdraw. But, in this particular docket, as  
15 you're well aware, the developer, Laidlaw, was granted  
16 intervenor status and was later allowed to withdraw. So,  
17 the law of the case is that voluntary intervenors do have  
18 the ability to withdraw.

19 PSNH has several pending motions  
20 outstanding that would be basically mooted if the  
21 withdrawal was allowed to take place and if they -- the  
22 testimony that was filed or submitted by Concord Steam was  
23 stricken from the record. And, if you grant their  
24 withdrawal and strike their testimony from the record,

1 PSNH could withdraw those motions so the Commission  
2 doesn't have to act on them, because they would, in fact,  
3 be moot.

4 So, we think that the withdrawal that  
5 was filed by Concord Steam Corporation is, in fact,  
6 effective, and that they are no longer parties to this  
7 proceeding.

8 CHAIRMAN GETZ: And, the motions you're  
9 talking about, is it the -- primarily, the Motion to  
10 Rescind or, in the alternative, Strike and to Compel?

11 MR. BERSAK: That's correct. And, I  
12 believe Concord Steam also has a motion outstanding with  
13 respect to confidential treatment of some data. To the  
14 extent that they have withdrawn, I believe that  
15 confidential data should be returned to them, and that  
16 also moots out their outstanding motion.

17 CHAIRMAN GETZ: Were there any other  
18 motions of PSNH that --

19 MR. BERSAK: No, that's it, sir.

20 CHAIRMAN GETZ: Okay.

21 (Chairman and Commissioners conferring.)

22 CHAIRMAN GETZ: Okay. What we're going  
23 to do with this issue, and maybe with some of these other  
24 procedural issues, I want to hear all the arguments, and

1 then, during the day, during a break, we'll take under  
2 advisement the arguments, and render a ruling before the  
3 end of the day, and try to start into the process of the  
4 actual hearings and get some witnesses on the stand. So,  
5 we'll take that issue under advisement for the time being.

6 And, I'd like to move onto the issues  
7 surrounding the City of Berlin Motion for Confidentiality  
8 and the OCA Motion to Strike. And, there's a relationship  
9 here between, we have the Motion for Confidential  
10 Treatment that was filed on January 12 by the City of  
11 Berlin. And, we have the rebuttal testimony that was  
12 filed on January 19 by the City as well. And, I want to  
13 make sure I understand where we are on at least some of  
14 these related issues.

15 First off, Mr. Boldt, I have a couple  
16 questions for you --

17 MR. BOLDT: Certainly, your Honor.

18 CHAIRMAN GETZ: -- about the status of  
19 some of this background material. First of all, the --  
20 so, we have the Motion for Confidential Treatment, and  
21 this deals with data requests that were filed by the wood  
22 IPPs on December 28, and the date of the response is  
23 January 10. Now, I didn't see an objection to any of the  
24 data requests.

1 MR. BOLDT: They were contained in the  
2 responses, Mr. Commissioner.

3 CHAIRMAN GETZ: The objections are?

4 MR. BOLDT: The objections were, and  
5 that was a late realization on my part, that some of the  
6 materials that Mr. Sansoucy had available were protected  
7 by copyright. The main two issues are --

8 CHAIRMAN GETZ: Well, let me understand.

9 MR. BOLDT: Okay.

10 CHAIRMAN GETZ: So, the objection -- so,  
11 I should -- is there any words that say "we object" or I  
12 should draw the conclusion from the answers that they are  
13 objections?

14 MR. BOLDT: They are objections, to the  
15 degree they weren't answered, they are. We used the words  
16 "we object" in the -- we're seeking the confidentiality in  
17 those responses.

18 CHAIRMAN GETZ: Can you direct me to  
19 where that occurs?

20 MR. BOLDT: Certainly. We have binders  
21 that will have them in it. But, in essence, what will be  
22 marked in the future as "Sansoucy" or "City Exhibit C",  
23 the text of the response to Number 1, I believe it is 3,  
24 we have, at the bottom paragraph, "other documents",

1 begins "other documents", that they're "proprietary and  
2 confidential and are not subject to disclosure under 91-A,  
3 and that a Motion for Confidential Treatment is being  
4 filed."

5 Similarly, on --

6 CHAIRMAN GETZ: Well, let me ask you a  
7 question, one question there.

8 MR. BOLDT: Certainly.

9 CHAIRMAN GETZ: So, when you say  
10 "subject to disclosure", are you saying "subject to public  
11 disclosure under 91-A" or "subject to disclosure through  
12 discovery"?

13 MR. BOLDT: Both is the intention, your  
14 Honor. What we're talking about at this time, other than  
15 the items that are listed in the first paragraph that are  
16 specifically set out, specifically available public  
17 information, in part, we're talking about confidential  
18 sections of Mr. Sansoucy's other files, a Ventyx  
19 publication and an Energy Solutions publication. The two  
20 prime issues are the Ventyx and the Energy Solutions.  
21 Those are publicly available for a fee. Frankly, it's a  
22 subscription service that, as our motion relates, has  
23 certain copyright materials, copyright obligations hoisted  
24 upon those subscribers. It is a service, though, that

1 Staff, OCA, PSNH, anybody can subscribe to. It's not one  
2 of those things that is something that nobody else can get  
3 their hands on. So, under the rules, we were expressing  
4 in our responses the objections and the desire to keep  
5 them confidential. Hence, our motion.

6 CHAIRMAN GETZ: Well, I guess I want to  
7 make one distinction. I think there's a difference  
8 between something being not subject to public disclosure,  
9 and that we could treat as confidential, is a different  
10 thing from whether it's subject to discovery and should be  
11 made available to other parties, subject to appropriate  
12 confidentiality orders or protective orders. So, I think  
13 those are two different things.

14 But let me, in the motion, it notes that  
15 the City is attempting to obtain permission, I guess both  
16 from Energy Solutions and Ventyx to make the information  
17 available. Can you tell me what the status of that --

18 MR. BOLDT: We have not received that  
19 permission to date.

20 CHAIRMAN GETZ: Okay. And, is it --

21 MR. BOLDT: And, it is one where I do  
22 not know if it will be granted.

23 CHAIRMAN GETZ: Is that the City's  
24 obligation or is that --

1 MR. BOLDT: It is technically  
2 Mr. Sansoucy's obligation, because it's not available,  
3 it's not something we have as a City document. It is,  
4 though, requested of Mr. Sansoucy. And, I would note at  
5 this time, your Honor, that these were requests from IPP.  
6 There is no Motion to Compel from IPP. There is no timely  
7 objection to our Motion for Confidentiality, Confidential  
8 Treatment. We were under the impression that our  
9 responses were subject to the same rules as the other  
10 parties that required the five day Motion to Compel that  
11 was set out in the original October order, scheduling  
12 order of this body.

13 In light of that, I would argue that  
14 this is not a timely or properly raised issue for the  
15 body, and to grant the confidential treatment for that  
16 reason also.

17 CHAIRMAN GETZ: And, you also indicated  
18 in the papers that the information, I assume, was going to  
19 be made available to Staff and the OCA and to the  
20 Commission. Has that been done?

21 MR. BOLDT: We made it contingent upon  
22 getting the permission. That, if we got the permission  
23 from those third parties, then we would provide it that  
24 way, in the hopes of limiting -- actually, of gaining the

1 permission from those bodies. And, as I say, I don't have  
2 permission. And, this is something, though, that Staff,  
3 OCA, IPPs could contact --

4 CHAIRMAN GETZ: Well, let me understand  
5 -- I'm trying to understand the distinction there. Our  
6 rules, under Puc 203.08, regarding confidential documents,  
7 under Subsection (c) and (d) contemplates providing the  
8 information to Staff at least in discovery, with a  
9 statement that it be treated confidentially.

10 MR. BOLDT: And, I guess, because we  
11 were -- we were very concerned on having Mr. Sansoucy  
12 violate that copyright, that we took the position, we are  
13 describing it, we are telling you where you can get it,  
14 but we are telling you why we can't give it to you. We  
15 thought we were complying with the PUC rules.

16 CHAIRMAN GETZ: That's not the way I  
17 interpreted the motion. I thought that it would be  
18 provided.

19 MR. BOLDT: If we got the permission,  
20 that was the intention. And, I thought that's what our  
21 motion said.

22 CHAIRMAN GETZ: If you got the  
23 permission, not subject to the granting -- so, even if we  
24 granted a protective order, there is still the issue of

1 the copyright problem?

2 MR. BOLDT: I would say so, in looking  
3 at it as dispassionately as I can.

4 CHAIRMAN GETZ: I guess that depends on  
5 a couple of things. Whether there's a "fair use"  
6 exception under the copyrights law or what the contract  
7 arrangement is between Energy Solutions and Ventyx with  
8 Mr. Sansoucy.

9 MR. BOLDT: Okay.

10 (Mr. Sansoucy conferring with  
11 Mr. Boldt.)

12 MR. BOLDT: If you treat us as  
13 confidential, Mr. Sansoucy is telling me we can provide  
14 the books, in essence, to Staff and the Commission.

15 CHAIRMAN GETZ: But not the Wood IPPs?

16 (Mr. Sansoucy conferring with  
17 Mr. Boldt.)

18 MR. BOLDT: Viewing that the bodies  
19 under you would be protected by the governmental usage.

20 CHAIRMAN GETZ: So, there's a specific  
21 exception in that arrangement between Mr. --

22 (Mr. Sansoucy conferring with  
23 Mr. Boldt.)

24 MR. BOLDT: The IPPs would be subject to

1 the copyright, because they are a potential buyer.

2 (Mr. Sansoucy conferring with  
3 Mr. Boldt.)

4 CHAIRMAN GETZ: Okay. Well, rather than  
5 --

6 MR. BOLDT: Sorry.

7 CHAIRMAN GETZ: -- keep going through  
8 this at this length, I think I understand some of your  
9 positions. It sounds like you may need to speak to your  
10 witness about the actual arrangements.

11 I want to find out what other positions  
12 other parties may have on this point at this juncture.  
13 So, well, I guess, you know, Mr. Shulock, this emanates  
14 from your data requests. What's your position?

15 MR. SHULOCK: Our position is, first,  
16 that in an expedited proceeding, we should not have to  
17 file a Motion to Compel if the objection was filed late.  
18 They filed a late objection, we're being criticized for  
19 having filed a late Motion to Compel.

20 CHAIRMAN GETZ: For having filed or for  
21 not -- I haven't seen a Motion for Compel.

22 MR. SHULOCK: You have not.

23 CHAIRMAN GETZ: Okay.

24 MR. SHULOCK: The objection not having

1       been made, they should simply provide those materials. We  
2       also think --

3                   CHAIRMAN GETZ: Well, let's stop right  
4       there, because it seems like you've said two different  
5       things. That they have filed a late-filed objection or  
6       there's not an objection. What's your position on --

7                   MR. SHULOCK: No objection has been  
8       filed. But we do object to their withholding this  
9       information. No written objection has been filed.

10                  CHAIRMAN GETZ: You've been aware,  
11       though, since they answered your data requests, that you  
12       didn't have the information?

13                  MR. SHULOCK: Yes, that's true.

14                  CHAIRMAN GETZ: Have you taken any  
15       effort to try to acquire that information from --

16                  MR. SHULOCK: We have not. We also  
17       object to the practice of requesting confidential  
18       materials be released to everyone, except to the party  
19       that actually requested them. There was nothing that  
20       prevented Mr. Boldt from requesting that the copyright be  
21       released for other parties in discovery. So, as a  
22       practice, we object to that. We also think that this goes  
23       substantially to weight and credibility that should be  
24       given to Mr. Sansoucy's testimony, that's based in large

1 part on confidential materials in files that belong to his  
2 other client. The Commission will never see those files,  
3 doesn't know what's in them, and has no opportunity to  
4 test Mr. Sansoucy's statements. That's our entire  
5 position.

6 CHAIRMAN GETZ: Thank you. Anyone else  
7 want to address the Motion for Confidentiality? Ms.  
8 Hatfield.

9 MS. HATFIELD: Thank you, Mr. Chairman.  
10 The OCA did inquire of the City's counsel on Friday to ask  
11 about the status of them seeking permission, and we were  
12 told that, consistent with what Attorney Boldt just told  
13 the Commission, that they were still awaiting the  
14 permission.

15 But the OCA has participated in many  
16 cases in the past where these types of copyrighted  
17 materials provided by consulting firms giving different  
18 types of market intelligence and that sort of thing have  
19 been provided to Staff and the OCA, because of that I  
20 think general exception for governmental entities, such as  
21 ourselves, who are governed by the Right to Know law. So,  
22 we're disappointed that we hear now, I believe we heard  
23 that we can receive materials, but we haven't. And, so,  
24 it makes it very difficult to cross-examine Mr. Sansoucy,

1 because we haven't had a chance to see those materials.

2 Thank you.

3 CHAIRMAN GETZ: Thank you. Anyone else?

4 Ms. Amidon.

5 MS. AMIDON: Yes. This issue arises in  
6 connection with the OCA's motion, and Staff supports the  
7 motion. And, with respect to the Motion for Confidential  
8 Treatment, we think, at this late date, it is unfortunate  
9 that the City of Berlin persists in trying to provide us  
10 with information where they made a statement that they  
11 were attempting to provide Staff and the OCA with this  
12 information, and we never got it.

13 I think that I would -- well, in  
14 addition, the Commission hasn't had a chance to examine in  
15 camera the materials where there is a claim for  
16 confidential treatment, and therefore has not been able to  
17 determine whether it is indeed confidential and protected  
18 from public disclosure or not. And, additionally, you  
19 would be making a ruling as to whether or not the parties  
20 in this docket would be able to see it in order to  
21 properly conduct an informed cross-examination of  
22 Mr. Sansoucy.

23 At this late date then, I would  
24 recommend that the Commission act favorably on the OCA's

1 motion, because, if you decide that you want to go  
2 forward, look at the materials, grant the Motion for  
3 Confidential Treatment, my honest assessment is that Staff  
4 would have to ask for a delay in the hearing so that we  
5 could review those materials, conduct discovery on  
6 Mr. Sansoucy, and provide an informed cross-examination  
7 before the Commission.

8 So, I don't think I can provide a  
9 particular opinion on the Motion for Confidential  
10 Treatment, not having seen that material myself. But I do  
11 believe that, whether we move forward today with  
12 Mr. Sansoucy's testimony in or out is something that needs  
13 to be decided rather soon.

14 MR. BOLDT: May I respond, your Honor?

15 CHAIRMAN GETZ: Well, let's go see Mr.  
16 Bersak first.

17 MR. BERSAK: Thank you, Mr. Chairman.  
18 The issue of providing copyrighted materials in response  
19 to discovery requests has always been troubling. It's  
20 been troubling to, I know, for Public Service, and  
21 troubling for other utilities and parties that practice  
22 before this Commission. Because, clearly, you know, if  
23 somebody was to ask for "Please provide a copy of  
24 Dr. Morin's book on return of equity", we're not going to

1 take it to the copying machine and make a copy and provide  
2 it. That's clearly a copyright violation. When you come  
3 to a subscription service, such as the matters that we're  
4 discussing today, it may only be one or two pages, but  
5 that might be the entire subscription. Is that a  
6 violation of copyright? It's a troubling issue.

7 Sometimes I have to admit that the  
8 Company has held its nose and cooperated and provided  
9 things, but was it a violation of copyright? We don't  
10 know. You brought up the issue, "is it fair use?" It  
11 might be.

12 Mr. Sansoucy and the City of Berlin have  
13 been more cautious than we are. I can understand that.  
14 We have, in the past, made copyrighted materials available  
15 for people to look at, we've even lent copies of books to  
16 other parties, if need be, to try to get around the  
17 copyright issue. But it is a significant issue, and it  
18 needs to be dealt with at sometime by the Commission as to  
19 how the parties should deal with that and not get into  
20 trouble with the owners of the copyright.

21 The other issue that you brought up,  
22 Mr. Chairman, with respect to "well, if it's confidential,  
23 shouldn't you have provided a copy to the Commission?" I  
24 have to just remind you that that's an issue that's

1 subsumed within the still outstanding Motion to Compel  
2 against Concord Steam that we have. They answered many of  
3 the questions that we seek to have them respond to that  
4 "the information is confidential, because it's owned by  
5 Concord Power & Steam, LLC." They did not provide copies  
6 of those confidential information to the Commission under  
7 the rule that you cited. So, we've got the same issue  
8 there that's outstanding. That people or parties have  
9 claimed confidentiality have not complied with the rule,  
10 and now the Commission is in the situation where it has to  
11 figure out what does it do now. Thank you.

12 MR. BOLDT: Brief --

13 CHAIRMAN GETZ: One second please.

14 (Chairman and Commissioners conferring.)

15 CHAIRMAN GETZ: Mr. Boldt.

16 MR. BOLDT: Thank you, Mr. Chairman.

17 Very briefly. I ask this body to remember that my client  
18 is a sister sovereign in the state. This is a  
19 municipality that has limited resources and limited desire  
20 to get into a slugfest over if someone in its charge  
21 violates a copyright. We did do what we believed was open  
22 and above board and in keeping with the spirit and  
23 intention of both this rocket docket and the PUC rules.  
24 We gave the express location of the information. Anybody

1 that needed it could go to those entities and obtain for  
2 the subscription fee the desired information.

3 We filed our Motion for Confidentiality  
4 13 days ago. Nobody said "boo" until about 5:30 last  
5 night, when I get an e-mail from Ms. Hatfield, that very  
6 briefly mentions this point in her Motion to Strike. It's  
7 by no means the substance of her Motion to Strike, by the  
8 way. We have given the information to the best we believe  
9 we could give this information. It is something that -- I  
10 am not a copyright lawyer, I'm a municipal lawyer. This  
11 is not one of those waters I wish to tread in. But it is  
12 something we, in good faith, gave the information to all  
13 parties in response to IPPs' requests. And, there was no  
14 objection within five days of our Motion for  
15 Confidentiality or our responses.

16 I do note that your rules allow there to  
17 be an oral request for waiver of any of the applicable  
18 rules. And, I would so request, if there is some hat  
19 being hung upon a peg of these rules, that that peg be  
20 waived in this particular instance.

21 Mr. Sansoucy is a well-known, I would  
22 say "usual suspect" in this arena. He can be  
23 cross-examined on the strength, merits, or relative  
24 weakness of any of his positions. This Board can allow

1 that cross-examination, and then take into consideration  
2 the weight and merit to give to his testimony. But, to  
3 strike it wholeheartedly, because we're abiding by a  
4 provided copyright, smacks just not fair and violates our  
5 due process rights participating in this hearing. Thank  
6 you.

7 CHAIRMAN GETZ: Thank you.

8 CMSR. IGNATIUS: Mr. Boldt, a couple of  
9 questions to follow up on that. And, we're moving from  
10 the confidentiality issue to the striking of testimony,  
11 and whether it's fair rebuttal. And, so, I ask that we  
12 hold off on that for a moment. It's complicated enough --

13 MR. BOLDT: Yes.

14 CMSR. IGNATIUS: -- just dealing with  
15 one issue at a time. Other than the confident -- excuse  
16 me, other than the copyright issue, does the City assert a  
17 confidentiality issue with respect to Mr. Sansoucy's  
18 materials, if it weren't copyrighted, would we be having  
19 any discussion about confidentiality here?

20 MR. BOLDT: The third party files that  
21 are voluminous and, again, they go to his -- to  
22 Mr. Sansoucy's background experience, that are fair game  
23 subject to cross-examination. That would be the only  
24 thing that I believe would not be covered by the copyright

1 petition elements of our motion. The copyright really  
2 goes to the two subscription reports, Ventyx and Energy.

3 CMSR. IGNATIUS: And, you've said you've  
4 made a request. Can you give a little more information on  
5 that? Is it a written request? An oral request? What  
6 date was it made?

7 MR. BOLDT: It is my understanding that  
8 that was handled by Mr. Sansoucy's office, and that we  
9 have not received any response back. I don't -- as I sit  
10 here today, I don't know of the date, I don't know if it  
11 was in an e-mail or a letter. And, I'm sorry.

12 CMSR. IGNATIUS: At some point during a  
13 break, if you could consult with Mr. Sansoucy and just put  
14 on the record the attempts that you or he have made for  
15 public release of that information or limited release to  
16 the parties, however it was phrased, would be helpful.

17 MR. BOLDT: I will do so.

18 CHAIRMAN GETZ: Ms. Hatfield.

19 MS. HATFIELD: Thank you. Without  
20 straying over to the other motion, I did just want to  
21 point out that it appears, although I'm not sure, but it  
22 appears, starting on Page 27 of his rebuttal, that  
23 Mr. Sansoucy may have waived some of the confidential  
24 claims, because there are quoted bullet points from Energy

1 Solutions. I don't recall if there are also quotes from  
2 Ventyx. But those run from Page 27 to Page 30 of his  
3 testimony. And, again, I can't say for sure if those are  
4 the same materials at issue, because I haven't seen the  
5 materials at issue. But he does quote to Energy  
6 solutions, and, you know, it looks like material from one  
7 of their -- what might be a copyrighted report.

8 CMSR. BELOW: What page are you  
9 referring to?

10 MS. HATFIELD: This is Mr. Sansoucy's  
11 revised rebuttal, starting on Page 27 of 48.

12 CMSR. BELOW: Got it. Thanks.

13 MR. BOLDT: And, I will find out if  
14 that's the same document or a publicly available one that  
15 is quoted there in the footnote, which gives the cite to  
16 it.

17 CHAIRMAN GETZ: Okay. Thank you. Let's  
18 turn to the OCA Motion to Strike. Well, we're at the  
19 motion, but, and I don't think you need to go through it  
20 in detail, Ms. Hatfield. Is there anything in particular  
21 that you would like to point out about it before I allow  
22 other parties an opportunity to speak to it?

23 MS. HATFIELD: I just wanted to say two  
24 things -- or, three things. I apologize for how late it

1 was filed. I apologize for the length. But I thought it  
2 might be helpful to the Commission to provide this level  
3 of detail, so that you could easily go to the pieces that  
4 are referenced. Thank you.

5 CHAIRMAN GETZ: Well, let me make sure I  
6 understand. From your perspective, is it effectively  
7 that, or, for the most part, you would strike everything,  
8 you'd have us strike everything up to Page 35, and then,  
9 from Page 36 on, where there's -- it begins with a  
10 specific reference to Mr. McCluskey's testimony, that you  
11 would -- you have no objection to the last 10 or 11 pages  
12 of the --

13 MS. HATFIELD: Yes, that's correct.  
14 And, actually, on Page 17 of 48, there is a question that  
15 we view as appropriate, related to capacity, that we do  
16 see as rebuttal. So that, if we look through the sections  
17 we've requested be struck, the Page 17, Lines 4 through 19  
18 -- or, 20, are actually not in our motion. But,  
19 otherwise, you are correct. Although, actually there's  
20 another section like that on Page 20, where Mr. Sansoucy's  
21 is asked a question that, again, makes a specific  
22 reference about the OCA and Staff's positions in their  
23 testimony, which we also view, I believe that was not  
24 covered in our motion.

1 CHAIRMAN GETZ: Thank you.

2 MS. HATFIELD: So, there are sections,  
3 before you get to Page 37, that we view that that could be  
4 construed as proper rebuttal.

5 CHAIRMAN GETZ: Okay. Thank you. Mr.  
6 Boldt, we'll let anybody else speak to this issue first,  
7 and give you the opportunity to go last.

8 MR. BOLDT: Thank you, sir.

9 CHAIRMAN GETZ: Ms. Amidon.

10 MS. AMIDON: Thank you. As I indicated  
11 before, Staff supports OCA's Motion to Strike. In order  
12 to promote the orderly conduct of this proceeding, the  
13 parties of this docket have to be mindful that rebuttal  
14 testimony should not present new argument. But is  
15 intended to counter the argument of another party. To the  
16 extent that Mr. Sansoucy's testimony direct the attention  
17 to things that the Staff did or did not relate in their  
18 testimony, it's not rebuttal.

19 In addition, eight pages of his  
20 testimony are really, I think, a verbatim response to a  
21 data request, which he can submit the response to the data  
22 request when Mr. Sansoucy takes the stand.

23 CHAIRMAN GETZ: I'm sorry, say that  
24 again.

1 MS. AMIDON: I think there are about  
2 eight pages of testimony related to siting, which was a  
3 response to a data request. And, it's repeated in the  
4 rebuttal. But Mr. Sansoucy can -- the City of Berlin can  
5 enter that response to the data request through  
6 Mr. Sansoucy as a witness on the stand. It's not  
7 appropriate to put a data request response in rebuttal  
8 testimony. It's not addressing an argument that was made  
9 by any of the propounders of direct testimony.

10 We believe it would be in the interest  
11 of the orderly conduct of the proceeding and due process  
12 for this testimony, as identified by OCA in its motion, to  
13 be stricken. And, again, if the Commission determines not  
14 to strike the testimony, we would request that the  
15 Commission delay the hearing to first address the City's  
16 claim of confidentiality, which we have just talked about.  
17 And, then, also allow the parties to conduct some  
18 discovery of the rebuttal testimony, so that we may be  
19 properly prepared for cross-examination. Thank you.

20 CHAIRMAN GETZ: Thank you. Is there  
21 anyone else? Mr. Shulock.

22 MR. SHULOCK: The Wood IPPs fully agree  
23 with the comments of Staff and the OCA, and we join in the  
24 motion and support it. And, we would point out that, on

1 Page 2 of 48, starting on Line 20, Mr. Sansoucy says that  
2 "the purpose of [his] testimony is to rebut Staff, OCA,  
3 Concord Steam, and the Wood-Fired IPPs." Concord Steam  
4 may have your permission to withdraw. We should not have  
5 rebuttal to testimony that they filed, if that testimony  
6 is not going to be in evidence. And, then, secondly, the  
7 Wood IPPs have never filed -- not filed any testimony in  
8 the proceeding. So, there's nothing in here that could  
9 rebut Wood IPP testimony. What I believe this is  
10 referring to is probably the data request information that  
11 Ms. Amidon raised. We did ask a data request. The  
12 response appears in testimony, and not in a data request  
13 -- well, actually, it does appear in the answer to our  
14 data request, but the testimony here is not rebuttal  
15 testimony, it's direct testimony on that issue.

16 CHAIRMAN GETZ: Thank you. Mr. Bersak.

17 MR. BERSAK: Thank you, Mr. Chairman.

18 First, I'd like to start off by expressing appreciation to  
19 Attorney Hatfield for getting this to us. Even though it  
20 was late yesterday, it did give us a chance to look at it.  
21 So, thank you. No apologies necessary. This is a  
22 compressed time period we're dealing with. So, thanks  
23 again.

24 When I viewed the motion, I viewed it as

1 basically there are two issues contained inside there.  
2 One is about duplication of materials that had been in the  
3 direct testimony submitted by the City. And, a second was  
4 whether other things that were not duplication were, in  
5 fact, fair rebuttal.

6 With respect to duplication, yes, there  
7 is duplication, the Company agrees, but I don't think that  
8 duplication creates any harm. It's already in the record,  
9 he could restate it. Well, we do have a paper industry in  
10 the state, maybe it helps them. But I don't think it  
11 really creates a problem for the docket. So, I'll turn to  
12 the other issue of "Is it fair rebuttal?"

13 CHAIRMAN GETZ: Well, when you're saying  
14 "duplication", are you referring to the data response?

15 MR. BERSAK: No. I'm referring to  
16 initial testimony. I think that there might be things in  
17 their initial testimony that were restated. With respect  
18 to the data response, I would assume that somebody asked  
19 that and thought it was relevant. The City gave an  
20 answer. And, maybe a different practice would have been  
21 to tender the data request into the record. This was a  
22 different way of getting to the same result. So, on that  
23 issue, I'm not going to take any stand.

24 With respect to whether the remainder of

1 the testimony is fair rebuttal, I turn to the end of the  
2 Consumer Advocate's motion, and the end of Section Number  
3 13, Paragraph 13. Where it says "New analysis and new  
4 testimony are improperly introduced on rebuttal." My  
5 contention is, "rebuttal", by definition, is new  
6 testimony. If there wasn't a need to put new testimony  
7 in, you wouldn't be filing rebuttal. So, clearly, the  
8 fact that it's new testimony is not a ground to strike it.  
9 Rebuttal testimony is testimony. And, I would assume  
10 that, in that new testimony, there is new analysis. The  
11 question is, "is it responsive to what other parties have  
12 filed?" And, my -- and, PSNH's contention is that it is.

13 The testimony filed by the Consumer  
14 Advocate and by the two Staff witnesses is broad and  
15 wide-ranging. It covers the topics of whether the PPA is  
16 in the public interest. It talks about market price  
17 tests. It talks about REC pricing, gas prices, REC  
18 availability, the number of RECs that should be purchased,  
19 the cumulative reduction factor. All these things that  
20 were contained within the Rebuttal Testimony of  
21 Mr. Sansoucy were dealt with in the testimony of Staff and  
22 OCA witnesses. We feel that it is, in fact, fair rebuttal  
23 to what was raised, and that it should not be stricken  
24 from the record.

1                   CHAIRMAN GETZ: Thank you. Mr. Boldt.

2                   MR. BOLDT: Yes. We believe it is fair  
3 rebuttal also, Mr. Chairman. We are expressly addressing  
4 issues raised by the various direct testimonies previously  
5 filed. And, I ask you to remember that our original  
6 direct testimony was filed, and we believe we filed  
7 everything on the day it was due. We understand there is  
8 a Puc rule that says, in the general rule, "it's not filed  
9 until when the paper lands." We would ask that that rule  
10 be waived in this instance, if it is given any strength.  
11 It is just a footnote in Ms. Hatfield's response or motion  
12 rather. But we have given clear and ample notice of our  
13 positions in support of this in our direct testimony, the  
14 same day that Staff filed its direct testimony, OCA filed  
15 its direct testimony, per the scheduling order in this  
16 matter.

17                   The clarifications, the additional  
18 arguments, the additional analysis, that is the nature of  
19 rebuttal. And, that it is something that is addressing  
20 that which is before this Board raised by a party. Ms.  
21 Hatfield would have you believe that rebuttal cannot be in  
22 favor of the party that is taking the position. It can't  
23 be in our favor. That is not what rebuttal is, even by  
24 this Board's own rules that she cites to, first, in the

1 PUC case order, where it is basically an instruction on a  
2 scheduling order going forward. And, next, in the other  
3 case she cites, which is a new analysis by the prime party  
4 involved in that docket. It's not an intervenor, such as  
5 the City.

6 We believe that Mr. Sansoucy's rebuttal  
7 testimony addresses the clear gaps that challenge the  
8 relative strength or weakness of the Staff and OCA's own  
9 witnesses. There are three legs of this stool. There's  
10 energy pricing, there's RECs, and there's capacity. Staff  
11 didn't address a third -- one of those three in the  
12 capacity. They give a paragraph that says, basically, "I  
13 haven't had time to look it. I don't think it's  
14 material." OCA's witness said it's "\$11 million under  
15 market in their capacity pricing." This testimony goes at  
16 length what they're wishing to strike. It's important for  
17 you to realize, goes to that capacity issue, goes to the  
18 REC pricing issue, goes to the propriety of this being in  
19 the public interest, not only for the City of Berlin and  
20 its residents, but the North Country and the state as a  
21 whole. Those are key issues that are directly in this  
22 matter. There is no doubt of that.

23 And, we would ask that the Motion to  
24 Strike be overruled and denied, so that this testimony can

1       come forward. Mr. Sansoucy is here for cross-examination.  
2       And, that is the proper way, I believe, that this body  
3       should handle this testimony. Happy to answer any  
4       questions.

5                       CHAIRMAN GETZ: Thank you. Ms. Amidon.

6                       MS. AMIDON: I just want to express my  
7       concern that Attorney Boldt would characterize Staff's  
8       testimony one way or another. And, just remind you that  
9       when Mr. McCluskey and Mr. Frantz will be on the stand,  
10      they will be able to say what their testimony does  
11      address.

12                      And, secondly, I was concerned that Mr.  
13      Boldt's statement drifted into testimony, and just want to  
14      express concern in that regard as well. Thank you.

15                      CHAIRMAN GETZ: Ms. Hatfield, you have  
16      the opportunity to go last on this issue.

17                      MS. HATFIELD: Thank you, Mr. Chairman.  
18      I think Attorney Boldt mischaracterized the motion when he  
19      said that our position was that "rebuttal cannot be in  
20      favor of the filing party." I certainly didn't intend to  
21      suggest that. And, I think Mr. Bersak made a good point  
22      that, in Paragraph 13, it would have been more proper for  
23      me to state new analysis and new direct testimony, are  
24      properly introduced on rebuttal, and I think I do say that

1 several times in the motion.

2 Also, Mr. Boldt discussed at length the  
3 rebuttal testimony of Mr. Sansoucy about capacity. I  
4 actually think that the other areas of his testimony are  
5 much more glaring examples of "improper rebuttal". And, I  
6 would just call the Commission's attention to those  
7 particular sections, where, for example, in my motion, in  
8 Paragraph 7(a), on Page 2, I quote a question Mr. Sansoucy  
9 is asked "Do you believe the siting of the plant in Berlin  
10 is appropriate, in the public interest and good for  
11 ratepayers?" That is a direct testimony type of question.  
12 And, I think that you'll see in my motion the quoted  
13 questions that I've provided to you, almost all of them  
14 are of that type. And, rather than filing 12 pages of  
15 direct back in December, perhaps Mr. Sansoucy should have  
16 filed something closer to the length of his rebuttal.  
17 Thank you.

18 CHAIRMAN GETZ: Okay. Thank you.

19 (Chairman and Commissioners conferring.)

20 CHAIRMAN GETZ: Okay. We're going to  
21 basically do the same thing with this issue, as with the  
22 last issue, take them under advisement. Recognizing that  
23 what I'd like to do is get to getting some PSNH witnesses  
24 on the stand, get the direct done, start the

1 cross-examination. Best case, during the lunch recess,  
2 we'll deliberate these issues and give you our answers  
3 after we come out of lunch and begin the afternoon  
4 session.

5 So, to the extent there's some questions  
6 for PSNH witnesses relative to either the Concord Steam  
7 testimony or the rebuttal of Mr. Sansoucy, may have to  
8 defer that a little bit. But I think we can handle that.  
9 I'd prefer not to take a half hour to an hour recess now  
10 to try and resolve all these issues.

11 Ms. Hatfield?

12 MS. HATFIELD: Are you ready to turn to  
13 the PSNH panel? Because, if you are, I have something to  
14 raise on that before they call their witnesses.

15 CHAIRMAN GETZ: Okay. Let's -- I think  
16 we had -- Mr. Rodier had one issue he wanted to raise.

17 MR. RODIER: Just a brief statement, Mr.  
18 Chairman, only a couple of sentences. Newco Energy, LLC,  
19 the 100 percent owner of Laidlaw Berlin BioPower and  
20 Gestamp Biometrica [sic] are discussing forming a  
21 relationship to work together to develop biomass energy  
22 projects in New Hampshire and New England. Gestamp  
23 Biotermica, S.L., headquartered in Madrid, Spain,  
24 indirectly owns 100 percent of Clean Power Development, a

1 developer of biomass energy projects headquartered in  
2 Concord, New Hampshire. Thank you.

3 CHAIRMAN GETZ: Thank you. Mr. Bersak.

4 MR. BERSAK: Mr. Chairman, one more  
5 procedural thing. At the start of today's hearing, when  
6 you were taking appearances, counsel for the Wood IPPs  
7 raised an objection to the proceeding going forward, based  
8 upon jurisdictional limits. And, you raised the fact that  
9 the Commission has already ruled on that order in Order  
10 Number 25,192. The Company is just curious as to whether  
11 you would -- the Commission would deem that further  
12 objection this morning as a request for rehearing, which  
13 sets into play very limited time to object to such a  
14 motion for rehearing, or whether it's not a motion for  
15 rehearing?

16 CHAIRMAN GETZ: Well, I'm not sure that  
17 that's what Mr. Shulock's position was.

18 MR. SHULOCK: We were specifically  
19 reserving our right to file a motion for rehearing. We  
20 don't our participation in this proceeding today to be  
21 construed as a waiver of our right to file a motion for  
22 rehearing at a later time.

23 MR. BERSAK: Okay. With that  
24 clarification, we understand. Thank you.

1 CHAIRMAN GETZ: Thank you.

2 Ms. Hatfield.

3 MS. HATFIELD: Thank you, Mr. Chairman.  
4 As I think you know, the parties agreed to circulate  
5 premarked exhibits. And, when PSNH handed out their  
6 exhibits this morning, Number 9 is called "Changes to  
7 PPA." And, so, the parties were handed a document that is  
8 titled "Changes to PPA offered by Laidlaw." And, I just  
9 wanted to bring that to the Commission's attention that  
10 the OCA has not had time to review that document.

11 CHAIRMAN GETZ: And, I don't think we  
12 actually have -- do we have that?

13 MR. BERSAK: I have not supplied it to  
14 the Commissioners yet.

15 CHAIRMAN GETZ: Well, actually, I'm not  
16 sure that we even have the list of -- prefiled list of  
17 exhibits.

18 MS. HATFIELD: And, if I could just -- I  
19 just want to express to the Commission, I'm not sure what  
20 you can do about it, but the fact that we basically -- it  
21 appears that we may have a new PPA before us, is going to  
22 make cross very challenging. And, I am absolutely willing  
23 to go forward. But I just want the Commission to  
24 understand that my cross of the Company has been developed

1 based on the PPA that was proposed, that was in the  
2 record. And, so, I will do that cross. And, then, what I  
3 will need to figure out how to do is to weave in cross on  
4 the new proposals.

5 So, I just wanted to flag that for you,  
6 and I will do my best to weave those things together.

7 CHAIRMAN GETZ: Okay. Well, let's --  
8 Mr. Bersak, can you tell me a little bit about --

9 MR. BERSAK: Absolutely, Mr. Chairman.  
10 Let me give you what will be marked as "PSNH Exhibit  
11 Number 9" for identification, so that the Commissioners  
12 can see what we are talking about. I have already  
13 provided copies of these to the Clerk and to the court  
14 reporter and to the other parties in the proceeding.

15 CMSR. IGNATIUS: Mr. Bersak, I think the  
16 Clerk needs a copy as well.

17 MS. AMIDON: I would point out he  
18 provided the copies to us about five minutes before the  
19 hearing commenced today.

20 CMSR. BELOW: And, do you happen to have  
21 a copy of the proposed Exhibit List?

22 MR. BERSAK: I'll give you my copy of  
23 it. There you go, sir. Over the weekend, the developer  
24 was considering matters that have taken place very

1 recently in this proceeding. They have considered the  
2 testimonies, the criticisms of certain parts of the PPA,  
3 and came to PSNH and said "We would be willing to make  
4 these changes." We felt that, as the utility, you know,  
5 what we are trying to do is implement public policy under  
6 the Renewable Portfolio Standard law by entering into this  
7 PPA. We felt that these changes were potentially  
8 beneficial, that they addressed many of the -- at least  
9 some of the issues that the other parties have brought up.  
10 We felt that we had a responsibility to make these changes  
11 known. And, to let the Commission decide if some or any  
12 of them would be consistent -- or, more consistent with  
13 the public interest and be part of the Commission's  
14 deliberations and perhaps conditions on approval.

15           Again, as Ms. Hatfield said this  
16 morning, time is short. I wish we had more time to  
17 provide this earlier, but we couldn't. This is Monday  
18 morning. The first thing when I came here, I provided it  
19 to everybody. I didn't just spring it on them while the  
20 witnesses were on the stand. It is what it is, and the  
21 panel will be able to address questions with respect to  
22 these matters that are on what has been marked for  
23 identification as "PSNH Exhibit 9".

24           CHAIRMAN GETZ: Thank you. Well,

1 actually, Mr. Shulock.

2 MR. SHULOCK: I agree with the Office of  
3 OCA. What this presents is an entirely new contract.  
4 This is a 20-year, very complicated self-executing  
5 contract. And, every one of the terms should be studied,  
6 carefully reviewed, its economics should be tested by  
7 Staff and the OCA witnesses and others who have a need to  
8 determine whether it is a cost-efficient, cost-competitive  
9 manner of proceeding, and whether it will provide benefits  
10 to ratepayers. I don't think that we should proceed this  
11 morning. I object to that. We're, of course, willing to  
12 proceed if we're overruled.

13 But, I think that, if this is going to  
14 be offered as a way of conditioning the contract, then the  
15 parties should have the opportunity to conduct discovery  
16 on the meaning of its terms, the function of its terms,  
17 the economics of these terms, and then to come back with  
18 prepared testimony on these, rather than trying to develop  
19 that through cross on the fly.

20 CHAIRMAN GETZ: Thank you. Ms. Amidon.

21 MS. AMIDON: Yes. Thank you. I have a  
22 little more pragmatic idea about this, which is, rather  
23 than allow PSNH to offer this document, which hasn't been  
24 examined, into evidence today, to defer that perhaps till

1 tomorrow, so that the parties can take some time to  
2 examine it. And, I think we should still be allowed to  
3 conduct our inquiry on what was filed with the Commission.  
4 This has not been offered as an amendment to the finding.  
5 Although, now that I said that, Mr. Bersak may call it an  
6 amendment to the filing. But I think that we need to have  
7 an opportunity to take some kind of recess to examine it  
8 and to develop some questions on it, mindful that the  
9 Commission has now opened up Wednesday to continue this  
10 hearing.

11 So, I would suggest we just not allow it  
12 to come into evidence on this first day, and perhaps wait  
13 until -- maybe have PSNH bring it in on rebuttal at their  
14 close, so that the parties can have some time to form some  
15 questions about it.

16 And, just on another matter, I did  
17 attempt to assist the Commission by asking people to  
18 premark their testimony -- or, at least provide an exhibit  
19 list, and to identify the testimony by the parties, rather  
20 than go in sequential order. It's intended to be a good  
21 faith effort to include everything that the parties wanted  
22 on their exhibit list, but does not foreclose parties from  
23 bringing new material, if it's appropriate. So, I just  
24 wanted to add that as a tag to my statement.

1                   CHAIRMAN GETZ: Thank you. Anything  
2 else on this issue? Ms. Hatfield.

3                   MS. HATFIELD: Mr. Chairman, I  
4 appreciate Attorney Amidon thinking on her feet and trying  
5 to figure out how best to get this in. I guess, you know,  
6 just thinking practically about my cross, what I think I  
7 might like to do to be able to cross on this, if my time  
8 for crossing the PSNH panel comes today, as I'm doing my  
9 cross on the PPA as filed, but then also maybe be able to  
10 reserve the right to do additional cross just on the new  
11 materials tomorrow. And, I'm thinking that it might just  
12 flow better. For example, there appear to be new terms  
13 related to RECs. If I'm doing my cross on the existing  
14 PPA, it seems like it might flow better if I did some  
15 cross on the new document, and that may happen today.

16                   CHAIRMAN GETZ: Anything else on this  
17 issue?

18                   MR. BERSAK: The Company is certainly  
19 willing, Mr. Chairman, to make the witnesses available at  
20 any time for the convenience of the other parties here.  
21 The Company still stands behind the PPA as it was  
22 submitted. These changes, as noted on the top of the --  
23 what's been marked "Exhibit 9" for identification are  
24 things that the developer has indicated that it is willing

1 to do. We just felt it was in the best interest of  
2 consumers to take them up on their offer, to the extent  
3 that this Commission or perhaps other parties join and say  
4 "Yes, these are better things. We would like those also."  
5 And, to just walk away from them, for expediency or  
6 because of the procedural vagaries of this docket, didn't  
7 make much sense to the Company.

8 CHAIRMAN GETZ: Okay. Thank you.

9 MS. AMIDON: And, Mr. Chairman, in the  
10 alternative, and this may be a preferred mode of  
11 operation, rather than allow this come into evidence at  
12 all, if the Commission thinks that it's appropriate for  
13 the parties to conduct further settlement, you can direct  
14 that at the close of the hearing. That's just an  
15 alternative I'm offering as I am trying to think of ways  
16 to handle this.

17 CHAIRMAN GETZ: Okay. Thank you.

18 (Chairman and Commissioners conferring.)

19 CHAIRMAN GETZ: Okay. We'll treat this  
20 issue the same way as the others. We'll deliberate during  
21 the lunch recess what's the best way to handle this. I  
22 think, for purposes of the hearing today, we'll I think  
23 use these exhibit numbers for pre-marking for  
24 identification purposes only. Of course, recognizing we

1 don't make any decision about whether the evidence will  
2 actually be admitted into something into the record for  
3 our consideration till the end of the proceeding.

4 And, then, for purposes of today, I'm  
5 going to overrule the objection from Mr. Shulock. And,  
6 during our deliberations, we'll undertake, in the same way  
7 as we did with -- as we will with the issue from the  
8 City's rebuttal testimony and the Ventyx and Energy  
9 Solutions reports of what's the best way to give parties a  
10 fair opportunity to prepare their cross.

11 So, is there anything else of a  
12 procedural matter before we get to the PSNH panel?

13 MS. AMIDON: Yes. In the interest of  
14 having an orderly process in this proceeding, on  
15 January 20th, I sent around a proposal on the order of  
16 witnesses. Of course, no one from Concord Steam is here.  
17 So, the order of witnesses that I contemplated would be  
18 the PSNH panel, the witness for the City of Berlin, the  
19 OCA, and Staff, allowing PSNH the opportunity to call back  
20 their panel at the end of cross-examination. And, PSNH  
21 asserted an interest, with respect to the Staff and the  
22 OCA, to be the last to cross-examine, and Mr. Bersak will  
23 correct me if I'm wrong.

24 Finally, we wanted to be cognizant that

1 Mr. Edwards may have some questions, and I don't know  
2 where he would fit in, and I don't know if Mr. Edwards  
3 does have any questions, but I just wanted to be cognizant  
4 of that.

5                   However, the City of Berlin, in an  
6 e-mail, expressed an objection to their witness following  
7 PSNH. I don't know if Mr. Boldt still has that same  
8 concern. But my feeling was that, because PSNH and the  
9 City of Berlin have common -- both support the filing,  
10 that having PSNH do rebuttal at the very end would suffice  
11 for them to present their case going last. Mr. Boldt  
12 apparently felt that Mr. Sansoucy should be the last  
13 witness. I think Staff should go last, as has been the  
14 case with the Commission. So, I don't know if there is  
15 still a concern on that.

16                   MR. BOLDT: My only comment, Mr.  
17 Chairman, would be that we are -- we view ourselves as  
18 supportive of the PPA, but, in a large part, rebutting  
19 that which Mr. McCluskey and Mr. Traum put forward. That  
20 it may make more sense, since we're an intervenor, that it  
21 be the Applicant, Staff, and OCA, and then the  
22 intervenors. I don't have to be last. That was my  
23 suggestion. I will, obviously, go in the order that you  
24 want to hear us.

1 (Chairman and Commissioners conferring.)

2 CHAIRMAN GETZ: Okay. In terms of order  
3 of witnesses, it will be PSNH, the City of Berlin, the  
4 Consumer Advocate, and Staff. Let me address the issue of  
5 cross, though. Ms. Amidon, I think you said that the --  
6 PSNH would like to go last, which I think in this is  
7 appropriate with respect to the OCA and Staff testimony.  
8 But, as for the City of Berlin testimony, which is  
9 supportive of the position, I would propose that the order  
10 of cross would be the Company, Mr. Edwards, and then to  
11 the others, to Mr. Shulock, Mr. Rodier, OCA, and Staff.

12 MR. BERSAK: Sounds eminently  
13 appropriate, Mr. Chairman. Thank you.

14 CHAIRMAN GETZ: Ms. Hatfield.

15 MS. HATFIELD: Mr. Chairman, I think  
16 that Mr. Rodier, on behalf of CPD, is more in the nature  
17 of friendly cross. That's been the tenor of his filings  
18 in this docket. And, then, the statement he made this  
19 morning, which was very helpful, clarifying that his  
20 company's parent is pursuing a relationship with Laidlaw's  
21 parent.

22 CHAIRMAN GETZ: So, you're essentially  
23 saying he should come before Mr. Shulock, instead of  
24 after?

1 MS. HATFIELD: Yes.

2 CHAIRMAN GETZ: Any objection to that?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Hearing no  
5 objection, that will be the order of cross. And, anything  
6 else?

7 (Chairman and Commissioners conferring.)

8 CHAIRMAN GETZ: Okay. Anything else  
9 before we hear from the panel?

10 (No verbal response)

11 CHAIRMAN GETZ: Okay. All right. This  
12 is what we'll do at this point. We'll take a very brief  
13 recess. Let the panel get situated, give Mr. Patnaude his  
14 first break of the day, and then we would resume shortly.  
15 Thank you.

16 (Whereupon a recess was taken at 10:33  
17 a.m. and the hearing reconvened at  
18 10:51 a.m.)

19 CHAIRMAN GETZ: Mr. Bersak.

20 MR. BERSAK: Thank you, Mr. Chairman.  
21 PSNH would like to present its witnesses as a panel.  
22 They're up on the witness stand right now. We have for  
23 you Dr. Lisa Shapiro, Mr. Gary Long, Mr. Terry Large, and  
24 Mr. Rick Labrecque. And, if the reporter could please

1 swear them in.

2 (Whereupon Lisa K. Shapiro, Gary A.  
3 Long, Terrance J. Large, and Richard C.  
4 Labrecque were duly sworn and cautioned  
5 by the Court Reporter.)

6 LISA K. SHAPIRO, SWORN

7 GARY A. LONG, SWORN

8 TERRANCE J. LARGE, SWORN

9 RICHARD C. LABRECQUE, SWORN

10 DIRECT EXAMINATION

11 BY MR. BERSAK:

12 Q. Mr. Long, can you please provide your full name,  
13 business address, and position with the Company?

14 A. (Long) My name is Gary A. Long. And, my business  
15 address is 780 North Commercial Street, Manchester, New  
16 Hampshire.

17 Q. And, are you the President and Chief Operating Officer  
18 of Public Service Company of New Hampshire?

19 A. (Long) Yes, I am.

20 Q. Thank you. Mr. Labrecque, can you also give your full  
21 name, business address, and position with the Company?

22 A. (Labrecque) My name is Richard C. Labrecque. I'm the  
23 Manager of Supplemental Energy Sources at PSNH. And,  
24 my business address is the same as Mr. Long's.

1 Q. Mr. Large, can you provide the same information please?

2 A. (Large) Certainly. My name is Terrance J. Large. I am  
3 the Director of Business Planning and Customer Support  
4 Services for Public Service Company of New Hampshire,  
5 also at 780 North Commercial Street, in Manchester.

6 Q. And, finally, Dr. Shapiro, if you can provide the same  
7 information.

8 A. (Shapiro) Yes. My name is Lisa Shapiro. And, I am at  
9 Gallagher, Callahan & Gartrell, 214 North Main Street,  
10 in Concord. And, I'm Chief Economist and a consultant  
11 with Public Service of New Hampshire.

12 MR. BERSAK: The Company has marked and  
13 provided a copy of the listing of exhibits to the parties  
14 and to the Clerk and to the reporter. We've marked as  
15 "Exhibit 1" for identification, Mr. Chairman, the Petition  
16 that Public Service filed on July 26, 2010, which  
17 initiated this proceeding. We've marked as identification  
18 -- Number "2" for identification an unredacted copy of the  
19 Power Purchase Agreement, which is the subject of this  
20 proceeding. We've marked as "Exhibit Number 3" for  
21 identification the Direct Testimony of Gary Long. We've  
22 marked as number "4" the Direct Testimony of Terry large.  
23 We've marked as number "5" the Direct Testimony of Rick  
24 Labrecque. And, we've provided his unredacted testimony

[WITNESS PANEL: Shapiro~Long~Large~Labrecque]

1 as a result of certain confidentiality rules that the  
2 Commission has made. So, you do have an unredacted copy  
3 marked as number "5. "Exhibit Number 6" for  
4 identification is the Direct Testimony of Dr. Shapiro. As  
5 "Exhibit Number 7", we've marked for identification the  
6 Rebuttal Testimony of Mr. Large, Mr. Long, and Mr.  
7 Labrecque. And, finally, as "Exhibit Number 8" we've  
8 marked for identification the Rebuttal Testimony of  
9 Dr. Shapiro. I believe that all the parties and everybody  
10 should have copies of all of those documents.

11 BY MR. BERSAK:

12 Q. Mr. Long, you submitted prefiled direct testimony in  
13 this docket, which has been identified as "PSNH Exhibit  
14 Number 3" for identification. Do you have any  
15 corrections, changes or updates to your testimony?

16 A. (Long) No. Only that that's set forth in the rebuttal.

17 Q. We have provided and we had some conversation this  
18 morning about what has been premarked as "PSNH Exhibit  
19 Number 9", which is titled "Changes to PPA Offered by  
20 Laidlaw". Are you familiar with that document?

21 A. (Long) Yes, I am.

22 Q. And, when the appropriate time comes, pursuant to the  
23 Commission ruling, will you be able to discuss those  
24 changes?

{DE 10-195} [Day 1 Morning Session Only] {01-24-11}

1 A. (Long) Yes, I will.

2 Q. Thank you. Mr. Long, do you adopt the testimony that  
3 appears in your direct testimony and in your rebuttal  
4 testimony as your testimony here today?

5 A. (Long) Yes, I do.

6 Q. Thank you. Mr. Large, you also submitted prefiled  
7 direct testimony in this docket, which we've marked as  
8 "Exhibit Number 4". Do you have any corrections,  
9 changes or updates to that testimony?

10 A. (Large) Yes. I have two minor corrections.

11 Q. Can you please state what those corrections are?

12 A. (Large) Certainly. In the exhibit of my testimony, on  
13 Page 5, Line 8, the number shown as "474,000" should be  
14 shown as "484,000". And, this is in response to a data  
15 request that was provided during discovery. And,  
16 secondly, a similar reference appears on Page 13 of my  
17 testimony, at Line 8. The number previously shown as  
18 "474,000", typographical error, is "484,000". Those  
19 are my corrections.

20 Q. Okay. With those corrections made, do you adopt the  
21 testimony that you provided in your direct testimony  
22 and in the rebuttal testimony as your testimony here  
23 today?

24 A. (Large) Yes, I do.

1 Q. Thank you, Mr. Large. Similarly, Mr. Labrecque, you  
2 also filed direct testimony in this docket, which has  
3 been marked for identification as "PSNH Exhibit Number  
4 5". Do you have any corrections, changes or updates to  
5 your testimony?

6 A. (Labrecque) No, I do not.

7 Q. Do you adopt the testimony that you provided in Exhibit  
8 Number 5, as well as that contained in the rebuttal  
9 testimony, which is marked as "Exhibit Number 7", as  
10 your testimony here today?

11 A. (Labrecque) Yes, I do.

12 Q. Thank you. And, Dr. Shapiro, you submitted prefiled  
13 direct testimony in this docket, which has been  
14 identified as "PSNH Exhibit Number 6". Do you have any  
15 changes, corrections or updates to your testimony?

16 A. (Shapiro) Yes, I do.

17 Q. Can you tell us what that update is?

18 A. (Shapiro) Yes. A substantial additional economic  
19 development benefit of the PPA was publicly announced  
20 after I filed my rebuttal testimony. Specifically, the  
21 owners of the Laidlaw project have reached a  
22 preliminary agreement providing for a green technology  
23 company to collocate a production facility at the site  
24 creating an additional 65 new jobs. Excuse me. The

1 combined facility then will bring the total direct  
2 production-related jobs at the site to over 100; 40 for  
3 the Laidlaw project and 65 for the biomaterials plant.  
4 Taking into account the potential of these additional  
5 65 new jobs, applying a range of multipliers of 1.5 to  
6 2, to estimate the indirect and induced jobs from the  
7 total 105 production-related jobs at the site, assigned  
8 some value to the other economic development benefits  
9 discussed in my prefiled direct and rebuttal testimony,  
10 I estimate the total economic development benefit from  
11 this PPA is in the range of 350 to 400 new permanent  
12 jobs. These jobs include the whole value added chain  
13 for wood, such as logging, trucking, processing, and  
14 finally producing a very high value renewable material.  
15 These jobs would primarily be located in the North  
16 Country of New Hampshire.

17 In addition to the 350 to 400 permanent  
18 jobs, the positive economic impacts during the  
19 construction phase would also be substantially  
20 increased, because the construction phase would now  
21 include an additional facility and improvements,  
22 increasing the number of jobs, household earnings, and  
23 gross state product from my estimates in my direct  
24 testimony and directly in the rebuttal.

1                   The value of the plant when completed  
2                   would also provide greater property taxes to the city  
3                   and the county, as well as more business taxes paid at  
4                   the state level. State policy at the New Hampshire  
5                   Resources & Economic Development have been targeting  
6                   these types of green chemistry development  
7                   opportunities. For example, the University of New  
8                   Hampshire has substantial research and develop  
9                   initiatives targeted at these types of projects.

10                   And, so, this is a substantial increase.  
11                   And, I've provided for you the additional estimates to  
12                   include in my testimony.

13       Q.       Dr. Shapiro, I've provided to you and to the parties  
14                   and to the Clerk and reporter a copy of what's been  
15                   marked is "PSNH Exhibit 10", which is an article from  
16                   Friday's, that's three days ago, 21st of January,  
17                   Berlin Daily Sun. The article is entitled "Green  
18                   company interested in locating on former mill site."  
19                   Is that the development which you just provided us some  
20                   information about?

21       A.       (Shapiro) Yes, it is.

22       Q.       Thank you. Other than that new matter, do you have any  
23                   changes, corrections or updates to your either direct  
24                   testimony that was filed or to your rebuttal testimony,

1 which has been identified as "PSNH Exhibit Number 8"?

2 A. (Shapiro) No, I do not.

3 Q. And, if you were asked those questions here today,  
4 would your responses to those questions be the same as  
5 contained in your testimony as you've updated it here?

6 A. (Shapiro) Yes.

7 Q. Thank you. Mr. Long, as the Company's president, could  
8 you provide a brief, succinct overview of what this  
9 proceeding is all about?

10 A. (Long) Yes, I would. Thank you. I'd first like to  
11 describe, summarize the PPA and the process, and the  
12 reasons why PSNH is supporting that. And, then, I'd  
13 like to briefly summarize our rebuttal testimony.

14 In its Power Purchase Agreement between  
15 Public Service and Laidlaw Berlin Biomass is a creative  
16 long-term agreement, which fulfills part of the State's  
17 goals for in-state, RPS-qualified renewable energy,  
18 that provides significant economic benefits to the  
19 State and to the North Country, at reasonable prices  
20 and with risk protection for our customers.

21 I'd like to point out that it's a  
22 voluntary agreement, as PSNH is not required to enter  
23 into such agreements. We entered into this agreement  
24 after considerable effort, because PSNH supports the

1 State's policies on environment, energy, and economic  
2 development, and we wanted to advance the State  
3 policies in these areas, particularly, with the  
4 in-state development of renewable energy resources.

5 I'd also point out that there's little,  
6 if any, benefit to PSNH's owners by PSNH entering in  
7 this agreement. There is a potential for a future  
8 opportunity at the end of the term of the agreement,  
9 but that's not what's driving this agreement. What's  
10 driving this agreement is fulfilling the State's  
11 policies regarding the matters I just mentioned.

12 Other states do provide economic  
13 incentives for owners or companies to enter in these  
14 arrangements, regulated companies, but not the State of  
15 New Hampshire. This Power Purchase Agreement is the  
16 result of efforts by Public Service Company, Laidlaw,  
17 and others over a period of nearly four years. It is a  
18 unique Power Purchase Agreement, based on a unique set  
19 of circumstances. And, I want to describe what some of  
20 the unique features and circumstances are.

21 First of all, the Laidlaw Berlin Biomass  
22 Project is fundamentally designed around an  
23 infrastructure, a set of skills, and a history of the  
24 Berlin/Gorham area, which make this, in my opinion, the

1 best site for a biomass facility in the state, and also  
2 an area that is in desperate need of economic  
3 advancement. And, this project, along with the other  
4 effects that Dr. Shapiro mentions, will create quite a  
5 beneficial economic development for the state and for  
6 that area.

7 It includes a unique Wood Price  
8 Adjustment provision, to ensure that the energy prices  
9 under the contract are reasonably related to a  
10 benchmark fuel cost. It also contains a very unique  
11 Cumulative Reduction Factor, which is the only feature  
12 of that type I've seen in any agreement. And, it's a  
13 feature of the contract which ties the contract energy  
14 prices with the actual hourly day-ahead locational  
15 marginal prices. Thus, it basically sets the energy  
16 rates in the contract at the day-ahead LMP over the  
17 duration of terms within the contract over a period of  
18 many years. It's an end-of-contract adjustment  
19 designed to protect customers against above-market  
20 prices over the contract term, but yet allows customers  
21 to achieve below-market prices. So, it's a one-way  
22 protection. It protects against upper side prices, but  
23 allows lower costs to go directly to customers. The  
24 REC, the Renewable Energy Certificate prices in the

1 contract are increasing discounts off of the State-set  
2 Alternative Compliance Payments over the term of the  
3 PPA. So, it guarantees that the renewable attributes  
4 of the facility, the price paid, is always below the  
5 Alternative Compliance Payments set by the State. In  
6 fact, in later years, it's 50 percent of those  
7 alternative payments.

8 The capacity prices are fixed for the  
9 first five years, and then increase gradually  
10 thereafter.

11 The base energy charge in the contract  
12 does not change at all over the term of the Agreement,  
13 except for the Wood Price Adjustment.

14 These unique terms make this contract a  
15 good contract to meet all of the State's goals and to  
16 protect customers. The direct economic benefits are  
17 significant. And, they include construction jobs,  
18 operating jobs, property taxes, fuel-related jobs, such  
19 as those for loggers and foresters and truckers.  
20 Direct grants to the City of Berlin and to community  
21 loan funds and other direct benefits that are set forth  
22 in the Testimony of Dr. Lisa Shapiro, some of which are  
23 conditions that have been set by the State's Site  
24 Evaluation Committee when they approved the project.

1           In addition to all of those economic  
2 factors, as noted this morning, yet another benefit is  
3 coming about, as mentioned by Dr. Shapiro, in that a  
4 collocated synergistic relationship with a new company,  
5 a green technology company, that comprise yet  
6 additional benefits to the state and to that part of  
7 our state. And, I will point out that none of these  
8 benefits and none of this achievement of the State's  
9 environmental goals will be achieved, can be achieved,  
10 without approval of this Power Purchase Agreement  
11 between PSNH and Laidlaw.

12           And, we strongly believe that the Power  
13 Purchase Agreement meets all of the requirements of New  
14 Hampshire law. It further advances the State's energy  
15 and environmental policies. And, we ask the Commission  
16 to approve it as soon as possible.

17           In our rebuttal testimony, which I  
18 strongly hope that the Commission reads it carefully,  
19 because it really puts some of the opponents' views in  
20 context and correct the errors and assumptions that  
21 others are making regarding the project. But we  
22 specifically disagree with the testimony of the N.H.  
23 PUC Staff and the Consumer Advocate's witness, who are  
24 opposed to the PPA and are advising against it. And,

1           therefore, we disagree with their recommendations.  
2           And, the foundation of this is that we think their  
3           assumptions are just wrong. And, if you have wrong  
4           assumptions, you're going to have wrong conclusions.

5                         In our written rebuttal, we find, you  
6           know, several errors and mistakes in their assumptions.  
7           And, one of those areas is in their assumption about  
8           what the future market prices will be. But the  
9           assumptions they make are unproven, in fact,  
10          unprovable. Neither Mr. McCluskey or Mr. Traum, PSNH  
11          or anyone else knows what the future market prices will  
12          be. And, the assumptions they made lead them to  
13          certain conclusions. And, you can pick different  
14          assumptions about future market prices and come to  
15          different conclusions. We think they have made the  
16          same mistake that others have made in the past, and  
17          that is using a fixed set of numbers to draw  
18          conclusions. PSNH does not do that. We do not assume  
19          what the future market prices will be. We designed the  
20          Power Purchase Agreement to protect consumers against  
21          variances from market prices. And, that is what the  
22          unique features I talked about are all about. And, we  
23          urge the Commission to dismiss those recommendations,  
24          because they're just flat wrong.

1 And, I'd be happy to answer questions.

2 MR. BERSAK: As my boss just said, the  
3 witnesses are available for cross-examination, Mr.  
4 Chairman.

5 CHAIRMAN GETZ: Thank you. Mr. Boldt.

6 MR. BOLDT: On behalf of the City of  
7 Berlin, Mr. Long, Mr. Labrecque, Mr. Large, and  
8 Dr. Shapiro, I'm Chris Boldt.

9 CROSS-EXAMINATION

10 BY MR. BOLDT:

11 Q. Is the statements, Mr. Long, that you've just made, in  
12 essence, the rationale for why PSNH believes the  
13 Laidlaw PPA is the right choice for PSNH and its  
14 customers?

15 A. (Long) Yes. And, as I mentioned, it's unique, and the  
16 terms of the Agreement are unique. But what makes the  
17 project itself unique is the site. It has -- and, it's  
18 one of the reasons why we held discussions with Laidlaw  
19 early on. We felt that to be the most viable biomass  
20 site in the state, and the one that had the greatest  
21 chance of going forward, and also one which was in an  
22 area of the state that really needed jobs and economic  
23 development. So, it is the right project. There's a  
24 limited number of new biomass plants that I think will

1 be achievable in the Northeast, and certainly in New  
2 Hampshire. So, this is the one that we view as most  
3 viable.

4 Q. And, you say this is the result of four years of  
5 negotiation, correct?

6 A. (Long) Well, as best as I can tell from my records, our  
7 introductory meeting between myself and Laidlaw  
8 officials was in April of 2007. So, we're coming up on  
9 that four year point, of when we first met each other  
10 to where we are now in the process.

11 Q. Allow me to go on a tangent briefly. It is my  
12 understanding that Concord Steam, whose position in  
13 this case is now -- they have asked to withdraw. But,  
14 just for clarification, is Concord Steam within PSNH's  
15 service territory?

16 A. (Long) No, it is not. It's in Unitil's service  
17 territory.

18 Q. Why is that important in the PUC's consideration of  
19 this PPA and Concord Steam's positions previously  
20 taken?

21 A. (Long) I can't speak for the Commission. But, for  
22 PSNH, it's important to us, because we try to match up,  
23 you know, our customers who will be served by these  
24 facilities with the benefits that will be received by

1           our customers. So, our focus is on our own service  
2           territory. And, obviously, our interest is in  
3           benefiting our own service territory and our own  
4           customers. So, you know, we feel there's a very close  
5           relationship between the Company and its customers. A  
6           facility that's in Concord we feel is something that is  
7           within the realm for Unitil to work with, and their  
8           obligation or their interest to try to work with them.  
9           And, we think it's best for utilities to try to focus  
10          on their own service territories.

11        Q.    Now, I believe it's in your rebuttal testimony, and I  
12           could be wrong, it could be in the direct, is it true  
13           that I read that PSNH would not enter into this PPA if  
14           there was not such a feature as the Cumulative  
15           Reduction Factor?

16        A.    (Long) No. We would not have entered a PPA without  
17           that feature. And, in fact, it was one of the early  
18           meetings between myself and the officials of Laidlaw,  
19           within the first couple of meetings, that I told them  
20           that we needed protection against -- for customers in  
21           the long-term that previous experience had been,  
22           particularly with the rate orders, that customers had  
23           paid prices. And, then, at the end of the rate order,  
24           the owners had the benefit of a fully paid off

1 facility, and the customers got no benefit for that.  
2 And that, I would not go forward unless we were able to  
3 reach some sort of arrangement so that customers, you  
4 know, in the event that we got into a circumstance  
5 where they paid above-market prices, that customers had  
6 to get that back. That we weren't going to proceed  
7 without that. And, because Laidlaw agreed to that  
8 condition, we were able to continue with our  
9 discussions.

10 Q. And, you mentioned that there were other instances  
11 where PSNH had contracts that did not have this  
12 Cumulative Reduction Factor in them?

13 A. (Long) There were, yes, a combination of contracts and  
14 Commission rate orders, for the most part, that came  
15 out in the 1980s, that were issued or entered into in  
16 the 1980s.

17 Q. So, this was a learning experience or a product of a  
18 learning experience, that had not previously protected  
19 the ratepayers?

20 A. (Long) Exactly. And, I think it was an experience for  
21 the whole state, but, obviously, for PSNH also.

22 Q. Am I correct in reading that the Cumulative Reduction  
23 Factor includes a priority lien granted to PSNH on the  
24 property?

1 A. (Long) Yes. And, it has several protections.  
2 Obviously, our interest was and our negotiation was  
3 that we wanted to make sure that it was real, and that  
4 was the term I used with Laidlaw, that, when it came  
5 time to exercise it, we needed assurance that it could  
6 be exercised.

7 Q. And, are you aware of this type of protection for the  
8 ratepayers being implemented in previous contracts?

9 A. (Long) I think my --

10 A. (Large) I can address that, Mr. Boldt. Thank you.  
11 While the circumstances are not identical, we are aware  
12 of these types of protections having been imposed by  
13 the Commission. And, in particular, we turn to the  
14 Commission's Order 24,969, associated with Concord  
15 Steam Corporation. And, in that discussion, Concord  
16 Steam -- or, the Commission was concerned about Concord  
17 Steam having access to facilities that were going to be  
18 operated by Concord Power. And, as a result, an  
19 agreement was reached, a priority lien, very similar in  
20 nature to the one that PSNH has with Laidlaw, was  
21 agreed to to protect the rights of Concord Steam.

22 Q. Now, is part of this Cumulative Reduction Factor that  
23 ties with, to my read, the purchase option in the  
24 agreement. I understand my read of OCA's and Staff's

1           comments is that's something that PSNH is not allowed  
2           to do. Do you have testimony addressing that issue?  
3    A.   (Long) Oh, yes. Again, we thought that one out also.  
4           And, we don't know exactly what the rules will be  
5           regarding PSNH ownership of generation, regulated -- I  
6           should say "regulated ownership of generation", that's  
7           used to serve our customers, really don't know what the  
8           rules will be there. But, in the event that it's  
9           allowable, I think, as our testimony says, and as Mr.  
10          McCluskey's testimony seems to imply, that would be the  
11          lowest cost, lowest cost approach for our customers.  
12          So, that would be one option, if it's available, that  
13          someone could consider then. But, in the event that  
14          wasn't available, there are other options for using the  
15          Cumulative Reduction Factor. We could sell it  
16          outright. We could sell that right outright. We might  
17          have some arrangements where an affiliate takes the  
18          property, and we transfer those rights, provided that  
19          customers get some payment back, you know, immediately  
20          or over time. So, we just try to keep open that  
21          several different options could be exercised. No one  
22          has to be, there's no one option, and we didn't want to  
23          exclude any options. That's what I mean by wanting to  
24          make sure that this -- the value of this, if there is

1 any value, and it could be zero, but, if there was any  
2 value in the 20 years, its value could be realize under  
3 a variety of circumstances.

4 Q. Now, there's been some discussion regarding the ability  
5 of some power generators to use PURPA, the Public  
6 Utilities Regulatory Policies Act to get new long-term  
7 rate orders. Are you aware of any developers recently  
8 asking PSNH for long-term PURPA rate orders?

9 A. (Long) No. We have not gotten such a request. We do  
10 purchase power from PURPA qualified facilities, on a  
11 short-term basis, but we haven't had any requests for  
12 long-term arrangements.

13 Q. Have any understanding of why?

14 A. (Long) Well, yes. It's pretty obvious to me. You  
15 can't get financing, I mean, it won't help you with  
16 financing or for project development. I can't imagine  
17 people spending a lot of money on a new project,  
18 without having some -- some level of certainty about  
19 revenue stream, from which they could design a  
20 financing arrangement that would allow it to go  
21 forward.

22 Q. Does PSNH use long-term energy price forecasts when it  
23 analyzed the PPA?

24 A. (Long) No. No, we didn't rely on a long-term forecast.

1 And, in fact, there isn't any that we could rely on,  
2 because nobody knows what the future will yield. And,  
3 so, we don't -- we don't use long-term forecasts,  
4 because they're just not believable. But we can run  
5 scenarios to see "what if this" or "what if that". But  
6 our focus was on getting terms in the PPA that protect  
7 against different things happening over time.

8 Q. Now, in your responses in this case, have you provided  
9 forecasts or are you providing scenarios?

10 A. (Long) Well, scenarios on a spreadsheet, is the way I  
11 describe them. Anybody can put numbers on a  
12 spreadsheet. You can put 20 numbers on a spreadsheet,  
13 and then compare that to other numbers. But that's all  
14 they are. Nobody knows or can claim to know what the  
15 prices will be, even next week, but certainly not next  
16 year or five years or twenty years from now.

17 If anything that we've learned from that  
18 previous experiences is that, is that forecasts are not  
19 accurate by their nature.

20 Q. Can you help me understand, clarify for me, the status  
21 of the RECs produced by your Schiller plant and how  
22 they impact this PPA?

23 A. (Long) Yes, I can. The Schiller Project, particularly  
24 Unit Number 5, which we call the "Northern Power

1 Project", it's a conversion or a new boiler to replace  
2 a coal boiler, and it's a renewable Class -- it's a  
3 Class I renewable facility. But, at the time that we  
4 received permission from the Commission to, again,  
5 another voluntary project to move forward, there was no  
6 State of New Hampshire Renewable Portfolio Standard.  
7 And, it was insistent on the Staff and OCA that there  
8 be a risk-sharing mechanism on that project. So, that  
9 project has a very unique risk-sharing mechanism that  
10 depends on the renewable attributes or Renewable Energy  
11 Certificates to be sold into the market. And, that is  
12 the foundation for how the financial recovery of that  
13 project will go forward.

14 And, so, that's exactly what we've been  
15 doing every since the project has gone into play, has  
16 gone into service. And, it's a 15-year agreement, as I  
17 can remember. And, so, we have to continue along those  
18 ways. And, we don't use it to meet our Renewable  
19 Energy Certificate requirements under the New Hampshire  
20 RPS, which was passed later. We're using other sources  
21 to meet the New Hampshire one. And, we continue to  
22 honor the Commission order and the settlement in what  
23 we call the "Northern Wood" case.

24 A. (Large) And, if I may, the requirement to sell those

1 RECs and utilize those proceeds, as Mr. Long has just  
2 described, has been memorialized in the Commission  
3 Orders 24,276 and 24,327.

4 Q. Now, are those -- is the wood price set at Schiller, is  
5 that subject to ongoing PSNH review on an annual or a  
6 periodic basis?

7 A. (Long) Yes. It's a regulated plant -- I mean, we're a  
8 regulated company. So, you know, everything, every  
9 aspect of that plant operation or costs is subject to  
10 review by the New Hampshire Public Utilities  
11 Commission.

12 Q. In your opinion, is there any way that a new renewable  
13 generating facility can be built that processes energy  
14 with energy based on cost, with a limited return, and  
15 with the PUC retaining its traditional authority to  
16 later alter, amend, or set aside a decision?

17 A. (Long) And, when you're saying "costs", are you talking  
18 about market costs or actual cost of operation?

19 Q. Market costs.

20 A. (Long) Not with market costs. I mean, that creates too  
21 much uncertainty. And, also, to have a decision that  
22 can be changed later would cause too much uncertainty.  
23 So, I can't imagine any project going forward, in fact,  
24 I have not seen any project in New England go forward

1 on that kind of condition.

2 Q. Now, I believe in your rebuttal testimony, I think it's  
3 Pages 12 and 13, you make the statement that "PSNH, in  
4 essence, understands that, in order for a merchant  
5 developer to obtain product financing, the investment  
6 banking community needs some certainty regarding  
7 revenues over the period of years. Am I correctly  
8 summarizing your testimony?

9 A. (Long) Yes.

10 Q. And, is that a correct understanding of the financial  
11 condition of the market at this time?

12 A. (Long) Yes, it is. I think we hear often, it's not  
13 just in New England, but we hear often, particularly in  
14 New England, that renewable product developers are not  
15 able to go forward because of lack of certainty and  
16 they are seeking long-term power purchase agreements,  
17 in order to get the certainty they need to actually do  
18 the financing.

19 Q. And, is that why the term of this PPA is 20 years?

20 A. (Long) Yes.

21 Q. And, is that an anomaly for agreements approved by this  
22 Commission?

23 A. (Long) No. Twenty years is rather common, and has been  
24 used many times. I think there's some, some contracts

1 might go fifteen, there's been some rate orders that  
2 can go 30 years. The 20 years is sort of a typical  
3 duration that one could do to make a financing  
4 arrangement, to have their financing paid off in 20  
5 years. You know, obviously, if you're a regulated  
6 utility, you'd go much longer. But, when you have  
7 different parties involved, you need a fixed term,  
8 longer is better, but I think the tolerance has been  
9 for something around 20 years.

10 Q. And, so, it's that term of 20 years that allows the  
11 capital costs to be amortized and a reasonable rate of  
12 return provided?

13 A. (Long) Well, a compensatory rate of return that would  
14 cause the investment to be made, yes.

15 Q. And, in this agreement, does that 20-year term allow  
16 there to be a track of future unknown or volatile  
17 pricing, taking into consideration that, so there's  
18 stability for the ratepayers?

19 A. No. And, I think, again, and it gets back to the  
20 Cumulative Reduction Factor, but we have pricing  
21 mechanisms that are very stable and predictable, to a  
22 large degree. But, on an hourly basis, they are tied  
23 to actual hourly prices in the market, and then  
24 adjusted after 20 years. The reason they can't be

1 adjusted before the 20 years is because they need the  
2 stability of revenue in order to do this financing.  
3 But, then, once that's over, and the plant has value,  
4 we felt that customers need to gain that value.

5 Q. And, in essence, all of the concerns about having a  
6 contract that can be financeable, was that important to  
7 PSNH so that you had a contract that was viable?

8 A. (Long) Yes. Well, without it, you don't have a -- you  
9 don't have a project. I mean, when you work with  
10 another party, who's putting up the money and taking  
11 the risks, obviously, you have to create the balance  
12 between what we're going to do as a company and what  
13 they're willing to do as a developer. And, our focus  
14 was on customers and protecting customers. But, at the  
15 same time, we were very interested in having more  
16 renewable energy in the state that would produce a  
17 significant amount of value in the state.

18 Q. So, in essence, this is complying with the RPS  
19 requirement in New Hampshire law and helping the  
20 economic development of the North Country?

21 A. (Long) Oh, absolutely. I think it's a very good fit  
22 with the law.

23 Q. Now, if the Commission were to condition its approval  
24 of the PPA on removal of PSNH's post 2025 obligations

1 to purchase RECs in this case, in your opinion, would  
2 this project be financeable or unfinanceable?

3 A. (Long) I would say it's unfinanceable. But, then, we  
4 haven't talked yet about what Laidlaw might be willing  
5 to do on that, that's Exhibit 9 that we haven't talked  
6 yet. But, I think, again, the first 20 years needs to  
7 have that predictable revenue stream. And, if the  
8 Commission were to put a condition that makes it not  
9 workable, either for them or for us, then, as I said  
10 earlier, this is a voluntary contract. We could walk  
11 away, as could Laidlaw.

12 Q. Now, if the Commission were to condition the approval  
13 of the PPA on a requirement that PSNH purchase only the  
14 amount of RECs it needs in any given year, at an amount  
15 needed to meet PSNH's requirements under the RPS law,  
16 would that make the project financeable or  
17 unfinanceable, in your opinion?

18 A. (Long) Yes. Again, if that resulted in a different --  
19 a lower revenue stream and greater risk to Laidlaw, it  
20 would make the commitment unfinanceable.

21 Q. Now, correct me if I'm wrong, but RECs in our state are  
22 resellable in the market, correct?

23 A. (Long) They're -- particularly at a plant like this, it  
24 qualifies in at least five of the New England states.

1           So, it could be sold in other places. In the course of  
2           the contract, new markets might develop. There could  
3           be a national Renewable Portfolio Standard in which it  
4           could be marketed.

5       Q.    If the Commission were to condition the approval of the  
6           PPA on a reduction of the term from 20 years, say, to  
7           12, would that make the project financeable or  
8           unfinanceable in your opinion?

9       A.    (Long) If you simply took the contract as is and  
10          reduced it from 20 years to 12, the project would die.  
11          I mean, it would be null and void. The only way you  
12          could use a shorter term, like 12 years, would be to  
13          raise the prices, to raise the prices to amortize over  
14          12 years, instead of 20 years, and PSNH would not want  
15          to do that.

16       Q.    And, if the PUC were to condition its approval on the  
17          removal of the Cumulative Reduction Factor, would that  
18          be acceptable to PSNH?

19       A.    (Long) No, that would be the deal killer. As I  
20          mentioned earlier, that is the reason we talk with  
21          them, their willingness. And, I think it was almost  
22          pleasantly surprising that I've got a developer that  
23          would be willing to consider that, but they're willing  
24          to consider that, because it was a condition of

1 continuing our discussions very early on.

2 Q. Now, I believe Mr. Frantz's testimony in this case  
3 refers to a \$26 million figure of over-market costs.  
4 Does the panel have any opinion on how that number  
5 compares to the cost of the RECs at the Alternate  
6 Compliance Price of Class I RECs?

7 A. (Labrecque) Yes. I can answer that question. And,  
8 first, I want to walk through how we believe the  
9 \$26 million figure was developed in Mr. Frantz's  
10 testimony. He refers to Mr. McCluskey's testimony.  
11 And, Exhibit GRM-12 of that testimony compares a --  
12 over the 20 years of the PPA, the PPA energy price for  
13 RECs -- excuse me, for PPA energy prices relative to  
14 what is termed an "adjusted market energy price  
15 projection", which I -- I can't find much basis for  
16 this projection. It's not described or I've been  
17 unable to find where it's described. But, again, it's  
18 just a stream of numbers. And, the result on GRM-12 is  
19 a average delta between the PPA price and the market  
20 price of \$29.55. That works out to be about  
21 \$14 million on an annual basis of energy over market  
22 claimed by Mr. McCluskey.

23 On Exhibit GRM-13, again, he's comparing  
24 a projection of the PPA REC prices to, in this case, an

1 adjusted Synapse market price for RECs. And, in our  
2 rebuttal, we pointed out some significant problems we  
3 have with the Synapse report, including the fact that  
4 the near-term prices in that report have proven to be  
5 unreliable, as have the near-term energy market  
6 projections. So, we call into question the ability of  
7 that report to serve as a valid basis for a 20 year  
8 projection of REC pricing in New England.

9 Also, we call into question the fact  
10 that the Synapse market price for RECs crashes to  
11 approximately \$6 a REC in 2024. And, when we asked in  
12 discovery "what was the fundamental reason for that  
13 collapse?" We essentially received a non-answer, to,  
14 you know, "refer to the Synapse report."

15 On GRM-13, the levelized average  
16 difference between the PPA REC prices and the Synapse  
17 prices is \$28.89 per REC. And, that works out to about  
18 another 14 million on an annual basis. So, now, we're  
19 at 28 million of claimed over-market costs in this  
20 analysis. And, I believe we get to 26 million by  
21 taking into account the GRM-14 capacity price  
22 comparison, which results in a nominal savings over the  
23 20 years of 40 million. So, in my mind, that's 20  
24 million a year -- excuse me, 2 million per year. So,

1 now, you're at 26 million. And, that 26 million,  
2 again, is made up of a speculative spreadsheet  
3 comparing the PPA energy prices to a snapshot of  
4 someone's view of the next 20 years. And, the REC  
5 price comparison is even -- you know, we have even more  
6 serious issues with that. What we have done is looked  
7 at the PPA REC pricing relative to the alternative  
8 compliance payment that's dictated by the law as a cap  
9 on the additional cost of renewables that the  
10 Legislature was willing to accept for the benefits that  
11 are derived from the RPS.

12 Relative to a projection of the ACP over  
13 20 years, the PPA REC prices saved, on an average,  
14 \$27.44 per REC. Over the 20 years, that's about  
15 \$255 million. And, it's roughly equivalent to the  
16 energy over-market in the analysis on GRM-12.

17 The other thing to take into account is  
18 GRM-12 uses a projection of the PPA prices based on \$34  
19 a ton wood, escalated at I believe 2.5 percent per  
20 year. And, in our rebuttal, we've described how, if  
21 you were to adjust the current price to the current  
22 price of wood of approximately \$27, and instead used a  
23 one percent annual escalator, over the term of the  
24 contract that would save an additional \$238 million.

1           So, we believe the \$26 million number is wrong. It's  
2           based on flawed analyses, and it can't possibly serve  
3           as the basis for rejecting this contract.

4                   MR. BOLDT: Nothing further at this  
5           time, Mr. Chairman.

6                   CHAIRMAN GETZ: Okay. Thank you. We'll  
7           turn to Mr. Rodier, and then we'll come back to  
8           Mr. Edwards. Mr. Rodier, do you have any questions for  
9           the panel?

10                   MR. RODIER: We have no questions, Mr.  
11           Chairman.

12                   CHAIRMAN GETZ: Thank you. Mr. Edwards.

13                   MR. EDWARDS: Thank you, your Honor.

14           BY MR. EDWARDS:

15           Q.    Mr. Long, were you aware that there are a couple of  
16           biomass plants in the UES that are 100 megawatts?

17           A.    (Long) I'm not personally familiar with them, no. I  
18           wouldn't be surprised if there were.

19           Q.    Were you aware that these plants don't just use  
20           forest-derived wood?

21           A.    (Long) Well, since I'm not aware of the plants you're  
22           referring to or know the names of them, I can't comment  
23           on that.

24           Q.    There's a couple of plants that are 100 megawatts that

1 use city waste, construction debris, and/or animal  
2 waste. And, I guess what I'm getting at is, would that  
3 lead you to believe that the 70-megawatt Laidlaw plant  
4 is really the largest forest-driven plant in the U.S,  
5 or certainly New England?

6 A. (Long) I have no reason to conclude that. I have no --  
7 I haven't researched that.

8 Q. Would you agree that the New Hampshire wood supply is  
9 "tapped" versus "untapped"?

10 A. (Long) I would like to expand on my other answer. I am  
11 told by others that, in Europe, there are much larger  
12 plants than what we have in the United States for  
13 burning biomass.

14 Q. But you're not certain that the 70-megawatt plant would  
15 be the largest in New England?

16 A. (Long) In New England? That's the largest that I know  
17 of, in New England.

18 Q. Okay. As far as New Hampshire wood supply, would you  
19 say that the New Hampshire wood supply is "tapped"  
20 versus "untapped"? In other words, there are other  
21 users in New Hampshire that are using wood right now?

22 A. (Long) There are multiple uses of wood in New  
23 Hampshire. And, I would say there is -- there  
24 continues to be a good supply for additional uses of

1 wood. I will also say that, from a consumer point of  
2 view, consumers only pay, under this contract, our  
3 customers only pay if it produces. So, the issue of  
4 wood and wood supply is not a PSNH issue. It's an  
5 issue for Laidlaw, because our customers are protected  
6 against that also.

7 Q. Would you agree that this 70-megawatt Laidlaw Project,  
8 the largest forest-derived biomass plant in New  
9 England, will be located basically in the middle of  
10 this tapped forest?

11 A. (Long) No. I wouldn't agree with that.

12 Q. Why is that?

13 A. (Long) Well, I think that there's quite a history up  
14 north of paper mills, and that four of them are shut  
15 down. And, I don't claim to be an expert, but every  
16 analysis I've seen said that there is more supply.  
17 Again, if the market does develop, some people remind  
18 me that, if you go back 30 years, there weren't any  
19 wood plants in New Hampshire. And, someone might make  
20 the same claim, "there's not enough wood." But, guess  
21 what? There was and is. And, as studies show, that  
22 there's more growth in the wood supply than there is  
23 use. So, it comes down to good forestry practices,  
24 which we have endorsed on many occasions. We certainly

1 endorse it as part our own Schiller Project. So, you  
2 know, I personally am confident there will be enough  
3 wood. But, from a contractor view point, customers are  
4 protected if there isn't.

5 Q. Were you aware that liquidated harvesting is  
6 significantly happening in Berlin?

7 A. (Long) No. And, no, I'm not aware, nor would I agree.

8 Q. Were you aware that sweeping legislative change has  
9 happened in Maine, as a result of liquidated  
10 harvesting?

11 A. (Long) No. And, I don't know that to be a fact. I  
12 have spent a fair amount of time working with experts,  
13 government experts and others in the wood industry.  
14 PSNH itself had an initiative that went on for a couple  
15 years. I know that it's -- exact information is not  
16 known. But, from what I have seen, is that there's  
17 ample supply of wood. And, I think the Site Evaluation  
18 Committee has looked at that. Again, I'm not an  
19 expert, nor is it a critical factor in the PPA. It's  
20 more of a critical factor in the siting.

21 Q. Where you aware that one of these harvesters that can  
22 no longer operate with this practice in Maine has  
23 purchased and liquidated thousands of acres in and  
24 around Berlin.

1 A. (Long) I'm not aware of that. But, as I said, we're  
2 aware of our own plant, which you would make the same  
3 sort of assertions, or you might have distinct or  
4 anecdotal information. Yet, we put a 50 megawatt plant  
5 in Portsmouth, and are able to operate it very  
6 successfully with an ample supply of wood. I have no  
7 reason to believe that a part of the state that is  
8 well-forested and has lots of expertise in that area  
9 that people won't be able to sustainably log wood up  
10 there either.

11 Q. Is PSNH's Schiller plant having to reach out further  
12 into New Hampshire for wood?

13 A. (Long) No. I don't know what you mean by "reaching out  
14 further". I mean, we could have -- we haven't had any  
15 problems with the supply of wood at Schiller.

16 Q. I'm just curious. I mean, with, you know, the slowdown  
17 in the economy, maybe not as much building going on,  
18 I'm just curious, with Schiller right now, and then  
19 Schiller can't go out into the ocean. So, I'm  
20 wondering if Schiller has to go out further into New  
21 Hampshire to get wood?

22 A. (Long) Well, as we've said in our testimony, our prices  
23 are less now than they were in the last few years. So,  
24 if we are, we are. The prices have gone down. And,

1 I'll disagree that we can't reach out to the ocean. We  
2 have a deep water port at Schiller. So, if there were  
3 supplies of wood anywhere in the world, it can get  
4 delivered to Schiller, if it were economic to do so.

5 Q. Is it currently economic to do that?

6 A. (Long) Not yet.

7 Q. Okay. Dr. Shapiro?

8 A. (Shapiro) Yes.

9 Q. Are you aware that Berlin has a State Prison?

10 A. (Shapiro) I have no specific knowledge of that, other  
11 than what's been in the newspapers.

12 Q. Are you aware that Berlin has a federal prison that is  
13 currently being staffed with over 200 professional  
14 employees this year?

15 A. I have no specific knowledge of that.

16 Q. Do you think that an annual payroll of 50 million would  
17 significantly enhance Berlin's economy?

18 A. (Shapiro) I'm not sure what the assumption is, the 50  
19 million. From where? New jobs? What you're talking  
20 about, sir?

21 Q. Well, I'm saying, between the State and Federal Prison,  
22 the statistics obtained are that 50 million in annual  
23 payroll is going to be produced. And, I guess what I'm  
24 asking is, do you think that an annual payroll of 50

1 million should significantly enhance Berlin's economy.

2 A. (Shapiro) I have no specific knowledge of the prison  
3 facilities, that specific number of payroll to study  
4 the impact of Berlin on those facilities.

5 Q. Do you agree with the statement that "90 percent or  
6 higher of payroll stays within a community"?

7 A. (Shapiro) I don't have specific knowledge of that  
8 general statement.

9 Q. I notice that you make mention to a change in your  
10 testimony as a result of a January 21st article in the  
11 Berlin Daily Sun, which was an announcement made by  
12 Laidlaw that there's going to be another green company,  
13 unknown green company, that will be coming to Berlin.  
14 Are you aware that Laidlaw has made over 40  
15 announcements in their tenure, of which most have never  
16 materialized?

17 A. (Shapiro) I'm not sure what you're referring to. I  
18 have no specific knowledge.

19 Q. Well, I guess this is an announcement that there may be  
20 a company coming to the area. And, I guess what I'm  
21 saying is, since Laidlaw was formed in 1999, there have  
22 been over 40 similar announcements that have never come  
23 to fruition. And, I'm asking you if you're aware of  
24 that?

1 A. (Long) I will say, as I've mentioned to you, I've been  
2 in contact with Laidlaw for nearly four years. And, I  
3 don't know what you mean by "40 announcements". I have  
4 not seen 40 announcements or any. The announcement I  
5 have seen is the one that we referred to. And, it  
6 seems very real to me.

7 But, no. I cannot verify that Laidlaw  
8 has made any other announcements of this type. If they  
9 would, we would have had a keen interest in it, because  
10 this Power Purchase Agreement would help make that  
11 happen. So, I dispute your claim of "40  
12 announcements". Like I say, I've been in contact with  
13 them for nearly four years.

14 Q. Mr. Long, the expert for the City of Berlin, Skip  
15 Sansoucy, has stated that the existing infrastructure  
16 should save considerable and capital costs. Do you  
17 agree with that concept?

18 A. (Long) I agree with it in concept, yes.

19 Q. Okay. So, given the savings, would you agree this  
20 should lead to reduced debt service?

21 A. (Long) The way I look at it is that it reduces the  
22 overall cost of the plant, but there's still very  
23 substantial costs in the plant. And, as I said  
24 earlier, you know, one of our interests in talking with

1 Laidlaw, when they approached us, was the fact that  
2 they had a start, they already had infrastructure and a  
3 boiler, which creates a very different development  
4 opportunity than a greenfield plant. But there still  
5 is a rather substantial investment that has to be made.  
6 For instance, there is not a generator on-site, there  
7 is not a turbine on-site. So, there are still -- and  
8 the water needs to be modified. So, there is still a  
9 very substantial investment needed.

10 Q. So, if the project had less debt service, would you  
11 agree that the project should be able to produce power  
12 cheaper than a greenfield project, for example?

13 A. (Long) You're asking me to compare something to  
14 something. I think, if you were to build a 70-megawatt  
15 greenfield plant, I suspect it would cost a lot more  
16 than the Laidlaw plant. But that wasn't the basis of  
17 our negotiation. The basis of our negotiation was  
18 specifically with the Laidlaw circumstances.

19 Q. In your opinion, have the savings in debt service been  
20 reflected in the rate structure now being considered in  
21 the PPA?

22 A. (Long) I don't know if I could say that precisely. I  
23 would say that the situation that Laidlaw was in I  
24 think allowed our discussions to go forward, and for us

1 to find, you know, that point where we can both agree.  
2 But we do not base our analysis on, nor do we know what  
3 Laidlaw's total investment will be or what their return  
4 on equity will be. We just -- that's not our business,  
5 it's their business. Our business is trying to obtain  
6 the products at a reasonable price.

7 Q. In your opinion, has the project offered to sell its --  
8 well, I don't know what they call it, is it "wrapped  
9 up", is it some sort of "wrapping up of rates", where  
10 energy, RECs, etcetera, I guess what I'm referring to  
11 is, all of the, I don't know, revenue-producing  
12 attributes of the project, are those at rates that are  
13 less than other projects?

14 A. (Long) I think, overall, yes. And, when you consider  
15 protection against customers, the answer is "yes", and  
16 other similar projects. There are no similar projects,  
17 but other biomass projects.

18 Q. Do you, with your background in, obviously, substantial  
19 background in business and management education,  
20 understand -- I'm sure you understand the concepts of  
21 supply and demand and micro and macroeconomics?

22 A. (Long) Sure. I have some knowledge of that.

23 Q. Okay. With your understanding of economics, in very  
24 generic form, can you explain "economy of scale"?

1 A. (Long) Generally, when something is larger, the  
2 infrastructure and the fixed costs associated with that  
3 can be spread off -- can be spread out over a larger  
4 product base.

5 Q. So, you'd agree --

6 A. (Long) And, therefore be lower cost than something  
7 smaller.

8 Q. So, you'd agree that this project of 70 megawatts  
9 should cost less than a smaller facility?

10 A. (Long) Yes. Our own engineering studies would suggest  
11 that, and, particularly, you know, less than a  
12 greenfield facility.

13 Q. Okay. And, would you not agree that the 70-megawatt  
14 Laidlaw Project would have a significant advantage over  
15 much smaller plants in its utilization of a labor  
16 force?

17 A. (Long) Are you talking about new plants that don't  
18 exist yet, but will be built?

19 Q. Well, I'm talking about a smaller plant versus a  
20 70-megawatt. I'm talking about scale of size and  
21 utilization of labor. Is the 70-megawatt plant going  
22 to have a advantage over a smaller plant?

23 A. (Long) Yes, it would be expected to. I'll give you an  
24 example. Just environmental reporting alone, whether

1 the plant is 20 megawatts or 70 megawatts, you have the  
2 same sort of environmental reporting required, you have  
3 the same sort of chemical tests required, you have the  
4 same sort of filings required. You know, if you assume  
5 you only need one plant manager, not two, regardless of  
6 the size. So, you know, again, I would expect that  
7 those are the sorts of things that generically you  
8 would find with larger installations.

9 Q. So, --

10 A. (Long) And, I would also add, if they have collocated  
11 another factory on the site, you could have additional  
12 -- additional synergies.

13 Q. So, in your opinion, are the economy of scale savings  
14 in the PPA?

15 A. (Long) Well, again, I can't tell you that for sure,  
16 because it's not our plant. I don't know all of the  
17 costs and investments. I think we got prices that we  
18 felt were fair and competitive and worked for both  
19 parties. I believe that Laidlaw is taking substantial  
20 financial risk, very substantial financial risk. And,  
21 that has to be taken into account on what prices they  
22 need in there to make it work. It's not just the cost,  
23 it's not a cost-of-service contract. That's what you  
24 get if PSNH owned it. This is not a cost-of-service

1 contract. It has to recognize the real risks that a  
2 developer faces.

3 Q. Well, let's talk a little bit about risk. Talk about  
4 the federal grant funds. So, throughout the SEC  
5 process, and prior to the PUC process, it's been  
6 mentioned about grants. And, I guess the grants are  
7 available, they amount to, what is it, 30 percent of  
8 the capital costs? Is that right?

9 A. (Long) I'm not an expert in that. You might want to  
10 ask that of Mr. Sansoucy, who is probably more familiar  
11 with that process and the grants. PSNH is not a  
12 recipient of any of the grants.

13 Q. Okay?

14 A. (Long) So, it's not something that we've been involved  
15 with.

16 Q. Well, for purposes of discussion right now, let's  
17 assume that it's 30 percent of the capital costs. Is  
18 it true that the eligibility requires construction by a  
19 certain point?

20 A. (Long) Eligibility for what?

21 Q. The eligibility for the grant. Do you have to begin  
22 construction by a certain point?

23 A. (Long) Well, again, I'm not an expert in this. I can  
24 only repeat to you what I've heard and not what I know.

1 And, have I -- you know, I've heard that they have some  
2 expiration of some of the grants. The grants go to  
3 others, not them. So, I would expect they would have  
4 to finance that money, even though they -- in order to  
5 get the grants, it could affect their overall  
6 financing.

7 Q. I have to admit, I'm very confused. But I'm of the  
8 impression that there's two choices that a project has  
9 in order to get compensated on the grants. So, one of  
10 those choices is to earn what I think they call  
11 "Production Tax Credits". Now, and then the project,  
12 from what I understand, they can sell as revenue, as a  
13 revenue source, and I think it's something like a  
14 little bit over one cent per kilowatt, is that right?

15 A. (Long) Again, you're asking the wrong person. I'm not  
16 Laidlaw, and I can't testify as to what their grants  
17 and what their financing is. All I know is that time  
18 seems to be of the essence to take advantage of some of  
19 those grants. That those grants go to the benefit of  
20 the state and the region. But, other than that, again,  
21 it's not a PSNH matter. It's not something that was a  
22 requirement. It might have been a requirement of the  
23 Site Evaluation Committee, but it's not a requirement  
24 of PSNH, and it's not addressed in the Power Purchase

1 Agreement.

2 Q. Okay. I guess the other choice is you can get a cash  
3 payment 60 days after the start-up, which is really  
4 what I'm getting at. And, based on 30 percent of the  
5 capital costs, that is a way that you can go about  
6 getting this. You get the -- you can get it 60 days  
7 after the start-up, there's a 30 percent payment that's  
8 available, is that correct?

9 A. (Long) Again, I do not know, and I'm not Laidlaw.  
10 That's not a PSNH matter.

11 Q. Okay. Well, I guess my concern on that is, you know, I  
12 have a real estate background, I look at this as a  
13 owner financing type of situation, and you want -- you  
14 want your people to have as much possible risk as  
15 possible. You know, if you were to take the 60 day  
16 after start-up payment, and you get your 30 percent  
17 back, you're eliminating all the risk that you put out  
18 in this project, you're getting it back right away. Am  
19 I reading that right?

20 A. (Long) Again, I don't know exactly what you're reading  
21 there. I do know that the Site Evaluation Committee  
22 put conditions on Laidlaw that required them to make  
23 payments to others. So, whether these benefits you're  
24 talking about accrue to Laidlaw or are simply passed

1 onto others, I don't know. But I think it is part of  
2 the added cost of the plant, the fact that Laidlaw had  
3 a number of requirements placed on it, by either the  
4 City or the Site Evaluation Committee.

5 Q. With what you know, has the financial information  
6 you're aware of been reflected in the pro forma of the  
7 rates?

8 A. (Long) No. The rates weren't based -- as I said, it's  
9 not a cost-of-service contract. The rates, whatever  
10 Laidlaw's costs and risks are, they're Laidlaw's, not  
11 PSNH's.

12 Q. So, has the rate in the PPA been reduced to reflect  
13 this?

14 A. (Long) What's "this" again?

15 Q. I'm just curious about this, this stream of equity. I  
16 don't understand what, if you're going to get it 60  
17 days out or if you're getting it over the life of the  
18 loan, I'm concerned about the risk. I mean, if all the  
19 investors are going to end up getting --

20 CHAIRMAN GETZ: Well, Mr. Edwards, I  
21 assume you're saying "you are going to get", I think  
22 you're talking about what "Laidlaw is going to get" and  
23 not what "PSNH is going to get"?

24 MR. EDWARDS: Well, I'm not sure. I'm

1 really not too sure. I don't know how this is -- how this  
2 is working. I don't know which --

3 BY MR. EDWARDS:

4 Q. I guess what I'm asking is, do you know which process  
5 you're going to be going through? Are you going to be  
6 getting the 30 percent back 60 days out or is this  
7 going to be something over the entire term of the 20  
8 years?

9 A. (Long) I think you're talking about something that  
10 doesn't relate to PSNH, so I can't answer it.

11 Q. With your knowledge of the Project, if the Company  
12 chooses to take the grant funds 60 days after start-up,  
13 do you agree that the amount will be somewhere in the  
14 range of 45 to \$70 million?

15 MR. BERSAK: I object to that question,  
16 Mr. Chairman. It assumes a fact that's not in evidence.  
17 The witness has already testified that the Company is not  
18 going to get anything. So, I don't think it's a valid  
19 question.

20 CHAIRMAN GETZ: And, I think Mr. Long  
21 answered that -- questions of this nature already that he  
22 doesn't have any awareness of how Laidlaw is going to be  
23 affected or what options it will pursue with respect to  
24 monies available, either through Stimulus funding or tax

1 credits. So, I think we need to move on to other  
2 subjects.

3 MR. EDWARDS: Okay, your Honor. I guess  
4 my concern is, we don't have Laidlaw here. You know, and  
5 I think this amounts to 45 to 70 million, if they take it  
6 out in 60 days. And, I guess my concern really is, is  
7 whether or not that has been taken into consideration to  
8 reduce the rate on the PPA?

9 CHAIRMAN GETZ: Taken into consideration  
10 by whom? By Laidlaw or by PSNH?

11 MR. EDWARDS: Well, I would say that  
12 both of them were negotiating the PPA. So, I would think  
13 that they would both be able to answer that.

14 MR. BERSAK: Mr. Chairman, Mr. Edwards  
15 petitioned to intervene in this proceeding, he could have  
16 filed testimony; he did not. He could have intervened in  
17 the Site Evaluation Committee process, which heard about  
18 tax credits and the various financings and incentives that  
19 were available to the developer, to the City, and to the  
20 County. I understand that he made public statements  
21 there, but did not intervene there. To try to make his  
22 case now on cross-examination, after not putting in  
23 testimony, asking the panel that does not have a clue what  
24 he's talking about, is not the way that this proceeding

1 should move forward.

2 CHAIRMAN GETZ: Mr. Edwards, do you have  
3 a response?

4 MR. EDWARDS: Well, I have one final  
5 question for Mr. Long.

6 BY MR. EDWARDS:

7 Q. Mr. Long, would you agree, if the owners take that  
8 grant after 60 days, that they're no longer at risk for  
9 their initial investment?

10 A. (Long) No.

11 MR. EDWARDS: I have no further  
12 questions.

13 CHAIRMAN GETZ: Thank you. Mr. Shulock.

14 MR. SHULOCK: I have some exhibits.

15 (Atty. Shulock distributing documents.)

16 MR. SHULOCK: We have one additional  
17 packet.

18 WITNESS LARGE: Thank you. Appreciate  
19 it.

20 MR. SHULOCK: Good morning.

21 WITNESS LONG: Good morning.

22 BY MR. SHULOCK:

23 Q. This question isn't directed at anyone in particular.  
24 I imagine that any of the three PSNH employees could

1 answer these.

2 CHAIRMAN GETZ: Mr. Shulock, I think you  
3 need to get closer to the microphone. A little closer.

4 BY MR. SHULOCK:

5 Q. This PPA has a term of 20 operating years, is that  
6 correct?

7 A. (Long) yes.

8 Q. And, when does PSNH expect that 20-year operating  
9 period to begin?

10 A. (Labrecque) I believe, in the Site Evaluation Committee  
11 hearing, we heard about "Q2 2013".

12 Q. That's the latest information?

13 A. (Labrecque) Excuse me?

14 Q. Is that your latest information?

15 A. (Labrecque) Yes.

16 Q. So, if the operating period begins in second quarter of  
17 2013, when would the 20 year period end?

18 A. (Labrecque) Twenty years later.

19 (Laughter.)

20 BY THE WITNESS:

21 A. (Labrecque) I believe that would be, is it 2032? 2033?  
22 Let's call it "2033".

23 BY MR. SHULOCK:

24 Q. Okay. And, the contract provides for something called

1 a "Scheduled Operation Date" in Section 5.2. And, the  
2 Scheduled Operation Date of that facility is set at  
3 "June 14th, 2014", is that correct?

4 A. (Labrecque) Correct.

5 Q. Or, I'm sorry, "June 1st, 2014"?

6 A. (Labrecque) That's correct.

7 Q. Okay. Is that --

8 CMSR. IGNATIUS: Excuse me, Mr. Shulock.

9 I'm sorry. I think I'm getting too old. I am having a  
10 very hard time hearing you. So, for the sake of the  
11 record, for the sake of us, can you please sit closer or  
12 speak, maybe bring your voice up a bit? Thank you.

13 BY MR. SHULOCK:

14 Q. How does the "Scheduled Operation Date" differ from the  
15 "In-Service Date"? Is there a difference?

16 A. (Long) All 5.2 says is "The original "Scheduled  
17 Operation Date", but the definitions, 1.25, define the  
18 "In-Service Date". And, there's another section that  
19 talks about other dates, but I have to find it.

20 Q. So, is it true that the In-Service Date and the  
21 Scheduled Operation Date of June 1st, 2014 may differ?

22 A. (Long) It depends on -- You have to look at how they're  
23 used in the contract.

24 Q. I mean as a factual date?

1 A. (Long) Well, one talks about the "original", and the  
2 other, "In Service", it will be the actual.

3 Q. Now, 5.2 requires the seller to give PSNH notice at the  
4 end of each calendar quarter of any change in the  
5 original Scheduled Operation Date. Has Laidlaw  
6 provided you with any notice that the Scheduled  
7 Operation Date will be anything other than June 1st,  
8 2014?

9 A. (Labrecque) Nothing in writing, no.

10 Q. Have they given you anything orally?

11 A. (Labrecque) No, other than testimony before the Site  
12 Evaluation Committee.

13 Q. So, it remains your best information that the operating  
14 period would begin in the second quarter of 2013?

15 A. (Labrecque) Yes.

16 Q. Thank you. Now, this term of 20 operating years, that  
17 is a term for the purchase of all products under the  
18 contract, is that correct, including New Hampshire  
19 Class I RECs?

20 A. (Long) Yes.

21 Q. And, again, you currently expect that operating term to  
22 end in the second quarter of 2032, is that correct?

23 A. (Long) Well, 20 years after the contract terms take  
24 effect, whatever that is. We don't know what it is.

1 Q. So, it may be later?

2 A. (Long) It could be.

3 Q. In fact, the contract contemplates that it may be  
4 later, is that right? You have penalty provisions in  
5 there?

6 A. (Long) Yes. I'm looking for them as we talk.

7 Q. This question is for Mr. Large. Mr. Large, your  
8 testimony provided PSNH's projected energy gap in 2014  
9 and 2025, is that correct? Isn't that one of the items  
10 that you corrected this morning?

11 A. (Large) Researching for the documentation to be sure.  
12 2014, and the graphics describe capacity and energy  
13 supply for 2014.

14 Q. And, you also described it for 2025, is that correct?

15 A. (Large) I don't believe I did so in my direct  
16 testimony.

17 Q. Let's look at, starting, if I have it right, Page 4 to  
18 5.

19 A. (Long) I have the reference to the earlier -- to the  
20 point in the contract that addresses your earlier  
21 question, if you want to get into it.

22 CHAIRMAN GETZ: You're talking about the  
23 penalty provisions?

24 WITNESS LONG: Yes.

1 CHAIRMAN GETZ: Why don't you put it on  
2 the record.

3 WITNESS LONG: All right.

4 BY THE WITNESS:

5 A. (Long) I'm looking at Page 18, Section 12.3.2, which is  
6 why I was hesitating on some of the dates that we were  
7 being asked about. But we recognize that the actual  
8 In-Service Date isn't known at the time that we signed  
9 the contract. So, Section 12.3.2 talks about the date  
10 of "June 1, 2014". It also talks about damages that  
11 the Seller, Laidlaw, would pay for each day that it's  
12 delayed. And, then, a more absolute date of  
13 "December 31st, 2015", but also recognizes that delays  
14 could happen as part of the regulatory process that  
15 could extend those dates.

16 BY MR. SHULOCK:

17 Q. So, you corrected me, Mr. Long. And, your projection  
18 of the energy and capacity gap is only for 2014?

19 A. (Long) Could I have that question again?

20 CHAIRMAN GETZ: No, I think we may be  
21 talking about two different things. I think Mr. Long was  
22 going back to what the possible In-Service Date should be,  
23 in reference to the PPA, and then I think you were  
24 inquiring of Mr. Large --

1 MR. SHULOCK: Yes.

2 CHAIRMAN GETZ: -- on a different issue.

3 MR. SHULOCK: Yes. And, that issue was  
4 on PSNH's projection of the energy and capacity gap.

5 CHAIRMAN GETZ: Yes. And, you really  
6 need to get closer to that mike. But you referring to  
7 Page 3 or 4, and you didn't say what document?

8 MR. SHULOCK: Page 4 and 5 of his  
9 original testimony.

10 BY THE WITNESS:

11 A. (Large) I have no references to "2025" in my initial  
12 testimony.

13 CHAIRMAN GETZ: And, what we're talking  
14 about here now has been marked for identification as  
15 "Exhibit 4"?

16 (Witness Large nodding in the  
17 affirmative.)

18 MR. BERSAK: That's correct.

19 BY MR. SHULOCK:

20 Q. And, Mr. Large, if you turn to Exhibit IPP-1?

21 A. (Large) I have it.

22 Q. Now, in this data response, you corrected your  
23 projection of the energy and capacity gap for 2014,  
24 correct?

1 A. (Large) Yes. It's revised to reflect what was actually  
2 filed in our Integrated Least Cost Plan filing made in  
3 September of this year.

4 Q. Would you please turn to Page 9 of 9 of this exhibit.  
5 This sheet is titled "Class I REC Forecast", correct?

6 A. (Large) I have that document.

7 Q. Titled "Class I REC Forecast"?

8 A. (Large) It appears on the page, yes.

9 Q. And, it provides a delivery sales forecast for the  
10 years 2010 through 2025?

11 A. (Large) It does.

12 Q. And, it states an RPS requirement for Class I?

13 A. (Large) Yes. It shows what the state mandated RPS  
14 requirements are in each of those years.

15 Q. So, the state mandated requirements for each of those  
16 years are "1 percent" in "2010", increasing to  
17 "16 percent" in "2025", at 1 percent increases, is that  
18 right?

19 A. (Large) Yes.

20 Q. Then, below that, you have each of two different  
21 migration rate assumptions; "31 percent migration" and  
22 "0 percent migration". This exhibit showed PSNH's  
23 forecast number of RECs required, the number of RECs  
24 under contract, and the additional RECs that PSNH

1 calculates that it needs for the years 2010 through  
2 2025, is that right?

3 A. (Large) That's the arithmetic presented, yes.

4 Q. If you look at IPP-2 please, Exhibit 2. The OCA sent a  
5 follow-up question to that data request, asking PSNH to  
6 "expand the forecasts for Energy Service and Capacity  
7 through the year 2020", is that right?

8 A. (Large) I have that document.

9 Q. And, Mr. Labrecque gave a response. What was that  
10 response?

11 A. (Labrecque) To what question?

12 Q. This would be IPP Exhibit 2.

13 A. (Labrecque) Yes.

14 Q. And, it's OCA 02, Q-OCA-001.

15 A. (Labrecque) Yes.

16 CHAIRMAN GETZ: I think he's just asking  
17 you to repeat the response.

18 WITNESS LABRECQUE: To what question?

19 CHAIRMAN GETZ: The question on the --

20 WITNESS LARGE: If you answered it.

21 BY THE WITNESS:

22 A. (Labrecque) Yes, I did.

23 BY MR. SHULOCK:

24 Q. Okay. And, what was your response, Mr. Labrecque?

1 A. (Labrecque) I'll read it. "PSNH does not have the  
2 Energy and Capacity forecasts available through 2020  
3 since the analysis was performed in support of the 2010  
4 Least Cost Integrated Resource Plan filing, DE 10-261.  
5 However, PSNH has revised the analysis previously  
6 provided to include the energy and capacity amounts  
7 with and without Laidlaw."

8 Q. Now, if you turn to Page 9 of 9 of that, Exhibit IPP-2,  
9 PSNH did not revise its REC I forecast as a result of  
10 those calculations, is that correct?

11 A. (Labrecque) Correct.

12 Q. If you look now at IPP Exhibit 2.

13 CHAIRMAN GETZ: Two or three?

14 MR. SHULOCK: I'm sorry, IPP Exhibit 3.

15 BY MR. SHULOCK:

16 Q. That asked PSNH to calculate the percentage of PSNH's  
17 Class I REC obligation that will be met each year with  
18 RECs purchased from Laidlaw. And, PSNH responded with  
19 percentages for 2011 through 2015, right?

20 A. (Labrecque) Yes.

21 Q. Okay. Staff's response wasn't limited to 2011 through  
22 2015, was it?

23 A. (Labrecque) In reading the question, I don't see that  
24 constraint.

1 Q. So, Staff asked a follow-up question. And, if you look  
2 at IPP Exhibit 4?

3 A. (Labrecque) Got it.

4 Q. Staff asked why the table that you provided in response  
5 to IPP Exhibit 3 "ended in 2015". And, what was your  
6 answer?

7 MR. BERSAK: Mr. Shulock, can you tell  
8 me which Staff question you're referring to? On your list  
9 of exhibits, you didn't have the number for this one.

10 MR. SHULOCK: It's 12.

11 MR. BERSAK: Twelve. Thank you.

12 BY THE WITNESS:

13 A. (Labrecque) The response was: "The table ended in 2015  
14 to be consistent with PSNH's 2010 Least Cost Integrated  
15 Resource Plan filing timing -- 5 year time frame."

16 BY MR. SHULOCK:

17 Q. Staff asked another follow-up question. Would you  
18 please turn to Exhibit 5, IPP Number 5.

19 A. (Labrecque) I have it in front of me.

20 Q. And, that request asked you to "explain why the energy  
21 service forecast is 73 percent of the delivery service  
22 forecast instead of 69." Can you explain to me the  
23 import of that question?

24 A. (Labrecque) Can you rephrase the question?

1 Q. "Please explain why PSNH's energy service forecast", in  
2 PSNH's response to Staff 1-19, "is 73 percent of the  
3 delivery service forecast instead of 69."

4 A. (Labrecque) I believe in the response here, on your  
5 IPP-5, I explain the reason why. It relates to the  
6 fact that, in the earlier questions, there was an  
7 adjustment for a delivery efficiency that really should  
8 not have been made.

9 Q. And, the second paragraph of your answer, would you  
10 read that please.

11 A. (Labrecque) "The proper calculation of RPS requirements  
12 would not have used the delivery efficiency, since RPS  
13 obligations are a percentage of end-use customers sales  
14 (as measured at the meter). The table provided in the  
15 response to Staff 1-19 has been corrected below."

16 Q. Now, can you explain to us whether that error in  
17 computation results in an overstatement or an  
18 understatement of the number of RECs that PSNH needs to  
19 satisfy its obligation?

20 MR. BERSAK: An understatement or  
21 overstatement where, Mr. Shulock? Can you identify that  
22 please?

23 MR. SHULOCK: Well, let's start with  
24 what's shown on IPP Exhibit 5.

1 BY MR. SHULOCK:

2 Q. Isn't it true that, for 2013, 2014, and 2015, you  
3 increased the percentage of the Class I requirement  
4 that would be met by Laidlaw? The one you showed in  
5 Staff 1-19?

6 A. (Labrecque) That's correct.

7 Q. Okay. And, is that because your previous calculations  
8 overstated the number of RECs that PSNH would require?

9 A. (Labrecque) Yes.

10 Q. Now, if you please turn back to Exhibit 1, which is OCA  
11 01, Q-OCA-003, Page 9 of 9. Do these calculations  
12 similarly overstate the number of RECs that PSNH would  
13 require to satisfy its RPS obligation?

14 A. (Labrecque) They appear to be consistent with our  
15 earlier version of Staff 19.

16 Q. So, they're consistent with inappropriately including  
17 the delivery efficiency in your calculations, is that  
18 right?

19 A. (Labrecque) Correct.

20 Q. I'm going to ask you to turn to IPP Exhibit 7, please.  
21 And, this is IPP-02, Q-IPP-018. Now, in this data  
22 request, the Wood IPPs asked, I won't read it  
23 word-for-word, asked for backup for Mr. Large's  
24 projections regarding the energy gaps. And, in Part

1 (a), we asked "Please provide all studies or analyses  
2 supporting the forecasts referred to by Mr. Large.  
3 Please state all assumptions made, and provide all work  
4 papers, projections, analyses, and documents, relating  
5 to these forecasts." Is that correct? I guess this  
6 would be for Mr. Large.

7 A. (Large) Yes, I have that.

8 Q. And, what was your response, Mr. Large?

9 A. (Large) I believe I refer to documentation in response  
10 to OCA data requests.

11 Q. Okay. And, that's "OCA-01, Q-OCA-003, which is --  
12 isn't it IPP-1, correct?

13 A. (Large) That is correct.

14 Q. And, that is the exhibit that we just established  
15 overstates PSNH's REC purchase obligation for the term  
16 2010 through 2025, correct?

17 A. (Large) Based upon the assumptions included therein,  
18 yes.

19 Q. Okay. And, if you please turn to Exhibit IPP-8. And,  
20 this is IPP Set 02, Q-IPP-020.

21 A. (Large) I have it.

22 Q. You have it?

23 A. (Witness Large nodding in the affirmative).

24 Q. And, here we ask Mr. Large for his analysis underlying

1 his projections for the New Hampshire Class I REC  
2 requirement. And, again, Mr. Large, you directed us to  
3 Q -- I'm sorry, OCA-01, Q-OCA-003, which is IPP Exhibit  
4 1, correct?

5 A. (Large) That is correct.

6 Q. And, in Part (b), the Wood IPPs asked "Did PSNH study,  
7 analyze, or otherwise forecast the need for New  
8 Hampshire Class I RECs for each of the years of the PPA  
9 or the 20-year term of the PPA, or any set of lesser  
10 years? If so, please state all assumptions made, and  
11 provide all related work papers, projections, studies,  
12 analyses, and documents." And, what was your answer to  
13 that?

14 A. (Large) It states that the analysis is provided in that  
15 response of Q -- of OCA-01, Question 003 through 2025.

16 Q. Thank you.

17 A. (Large) It does not state "the forecast".

18 Q. I'm sorry, I didn't -- it doesn't state what, sir?

19 A. (Large) It doesn't say "the forecast". It says "the  
20 analysis".

21 Q. Now, when PSNH did these studies, analyses, projections  
22 of its RPS requirements and energy needs, did PSNH take  
23 into account -- I'm sorry, study, analyze, or otherwise  
24 forecast the effect that the Laidlaw PPA might have on

1 customer sales and migration?

2 A. (Large) No.

3 Q. Thank you. If you turn to Exhibit 9, please. This is  
4 IPP Exhibit 9, which is from IPP Data Set 02,  
5 Q-IPP-071. And, here we asked for PSNH to "provide  
6 forecasts of annual megawatt-hour sales used to  
7 determine the forecast for Class I New Hampshire RECs  
8 [that were] noted in Q. 2-20." And, your answer to  
9 that, Mr. Labrecque, was that "The response to  
10 Q-IPP-02-020 included that requested megawatt sales  
11 information", correct?

12 A. (Labrecque) Correct.

13 Q. Then, in Part (b), we asked you to "identify all the  
14 assumptions in producing the forecast", and, in Part  
15 (c), we asked for "all [of your] work papers,  
16 evaluations and analyses and sensitivities analyses  
17 pertaining to [those] forecasts", correct?

18 A. (Labrecque) Correct.

19 Q. And, would you please read your answer for (b) and (c).

20 A. (Labrecque) "The questions are seeking "all  
21 assumptions" and "all work papers" related to the PSNH  
22 sales forecast. PSNH's sale forecasting practices are  
23 not a subject of this proceeding. PSNH objects to  
24 questions as they are overly broad and unduly

1           burdensome, and clearly intended to impair the orderly  
2           and prompt conduct of these proceedings. PSNH further  
3           objects to this question as the documents requested  
4           would not provide or lead to relevant or admissible  
5           evidence."

6   Q.    Aren't REC requirements based on sales?

7                           MR. BERSAK: I object, Mr. Chairman.  
8           There's an objection that was opposed in a data request.  
9           The five days for objecting -- for opposing objections or  
10          motions to compel have long expired. We spent the morning  
11          going over outstanding procedural issues. Had the  
12          Wood-Fired IPPs wished to compel an answer to this, they  
13          should have done so a long time ago. To now resurrect  
14          what they have not done on the stand is just improper.

15                          MR. SHULOCK: I'm not asking him here to  
16          provide me with all of his assumptions and work papers.  
17          I'm only asking him "whether PSNH's REC purchase  
18          obligations, the requirement that they retire  
19          certificates, is based on their sales?"

20                          CHAIRMAN GETZ: Well, we'll permit that  
21          question and see where we go from there.

22                          MR. BERSAK: Thank you.

23   BY THE WITNESS:

24   A.    (Labrecque) Yes.

1 BY MR. SHULOCK:

2 Q. Thank you. Now, Mr. Labrecque, the purpose of your  
3 testimony, as I remember, was to explain the terms and  
4 conditions of the PPA, is that right?

5 A. (Labrecque) Correct.

6 Q. And, one of those terms that you explained is the  
7 Cumulative Reduction Factor, is that right?

8 A. (Labrecque) It is.

9 Q. And, you stated that "PSNH believes this to be an  
10 important feature of the PPA." And, Mr. Long, as I  
11 remember, stated that "PSNH would not have entered the  
12 PPA without it." Is that right?

13 A. (Labrecque) Yes.

14 Q. And, according to your testimony, as I understand it,  
15 that's because it provides PSNH ratepayers with the  
16 opportunity to recapture over-market energy payments,  
17 is that right?

18 A. (Labrecque) Yes.

19 Q. And, you used the term "opportunity", is that right?

20 A. (Labrecque) Yes.

21 Q. Would you agree with me that it's not a guarantee that  
22 they will recapture over-market energy payments?

23 A. (Labrecque) It's not a guarantee. I don't understand.  
24 There's an opportunity, depending upon conditions that

1 exist at the end of the PPA, and during the course of  
2 it, should there be over-market payments made, for that  
3 fund to accumulate some significant dollars.

4 Q. Mr. Long testified that "PSNH did not forecast what  
5 that over-market energy payment will be", didn't he?

6 A. (Long) Yes. As I said, we don't forecast energy  
7 prices.

8 Q. Thank you, Mr. Long.

9 A. (Long) Pardon me?

10 Q. Thank you. So, sitting here today, you don't know what  
11 that over-market energy payment would be or the amount  
12 of that over-market energy payment would be at the end  
13 of 20 years, is that correct?

14 A. (Long) It could be zero, it could be no over-market  
15 payment. If there was, then there would be the  
16 Cumulative Reduction Factor, which could be exercised  
17 in the ways I described earlier.

18 Q. And, that Cumulative Reduction Factor is a reduction in  
19 the purchase price of the facility, is that right?

20 A. (Long) That's one of the options.

21 Q. What is the other option for the Cumulative Reduction,  
22 Mr. Long?

23 A. (Long) Another option is to sell that right to somebody  
24 else. Another option is to sell the right or transfer

1 the property to someone else, an affiliate or a  
2 non-affiliate and get a payment from them. I mean,  
3 it's whatever business arrangements can be made at the  
4 time, based on the conditions at the time.

5 Q. And, what are those conditions, Mr. Long?

6 A. (Long) The law. If the law allows PSNH to own  
7 additional regulated plant, that would be one option.  
8 Another option would be, as I said, to sell the plant.  
9 The conditions would be "what is the perceived market  
10 value of the plant? What's the energy marketplace  
11 like? What's PSNH's portfolio look like?" It just  
12 could be any number of circumstances that decision  
13 makers would have to look at at the time.

14 Q. And, currently, PSNH is not permitted under law to  
15 purchase generating facilities, is that correct?

16 A. (Long) Not exactly. We can purchase a generating  
17 facility. The question is, "can it be included as a  
18 rate base facility that serves customers under Default  
19 Energy Service?"

20 Q. I apologize. I wasn't exact. You can't -- PSNH can't  
21 place new generating facilities into rate base  
22 currently?

23 MR. BERSAK: Objection. That calls for  
24 a conclusion of law.

1 CHAIRMAN GETZ: Well, I think it's a  
2 fair question to ask what Mr. Long's understanding is.  
3 We've already delved into areas that Mr. Long has  
4 addressed --

5 MR. BERSAK: Then, I'll object on  
6 relevance, because the option to purchase isn't going to  
7 come to fruition until 20 plus years from now.

8 CHAIRMAN GETZ: I'm going to overrule  
9 the objection.

10 MR. SHULOCK: If I may, that is the  
11 point. That it's probably not going to occur until 20  
12 years from now, and we don't know what the circumstances  
13 will be. And, secondly, I believe Mr. Long actually  
14 answered the question that I just rephrased. So, I'll  
15 consider his answer as having been made.

16 BY MR. SHULOCK:

17 Q. So, you said that the -- whether the Cumulative  
18 Reduction will be realized for the ratepayers, depends,  
19 in part, on the perceived market value of the facility  
20 20 years from now, is that correct?

21 A. (Long) I said that, to be more correct, there's a  
22 process in the contract to actually appraise and  
23 determine what the market value is.

24 Q. And, when would that determination be made?

1 A. (Long) Well, if you give me a moment, I'll point you to  
2 the point that is in the contract which talks about  
3 that.

4 MR. BERSAK: Mr. Long, --

5 CHAIRMAN GETZ: While Mr. Long is  
6 looking for that, Mr. Shulock, I'm just trying to make a  
7 decision about when's the best time to take the lunch  
8 recess. How much further do you have? I assume you're  
9 going through this list of 17 exhibits.

10 MR. SHULOCK: I'm about a third of the  
11 way through. And, I'm happy to take a lunch break now, as  
12 soon as he answers the question.

13 BY THE WITNESS:

14 A. (Long) The section I'm looking at is Section 7, starts  
15 on Page 11.

16 BY MR. SHULOCK:

17 Q. I'm sorry, I didn't hear you, Mr. Long.

18 A. (Long) I said "Section 7", Article 7 of the contract  
19 goes to the option, the purchase option, and the use of  
20 the Cumulative Reduction Factor.

21 Q. Well, I'm asking, will PSNH determine the fair market  
22 value of the facility at the time that it exercises the  
23 purchase option?

24 MR. BERSAK: I would refer Mr. Long to

1 the bottom of Page 34 of the PPA, in the section that says  
2 "Purchase Price".

3 BY THE WITNESS:

4 A. (Long) Page 35, at the top, Section 5(b) talks about  
5 what happens "if the parties are unable to establish a  
6 mutually-agreeable fair market valuation". And, it  
7 involves getting appraisals and valuations from  
8 independent parties.

9 BY MR. SHULOCK:

10 Q. So, PSNH has not made that determination of fair market  
11 value sitting here today?

12 A. (Long) Well, we can't. Nobody can, until they get  
13 closer to that 20th year.

14 Q. So, it's an unknown?

15 A. (Long) It's unknown today what the market value will be  
16 after 20 years, yes.

17 Q. Now, you said that one of the things that will  
18 determine the market value of the facility 20 years  
19 from now will be the energy marketplace?

20 A. (Long) Yes.

21 Q. Has PSNH studied what the energy marketplace will be  
22 like 20 years from now?

23 A. (Long) There's nothing to study. Nobody knows what the  
24 price is going to be in the future. That's been the

1 point of the whole rebuttal. The Staff doesn't know  
2 what the future energy prices will be, you don't know,  
3 the Consumer Advocate doesn't know, PSNH doesn't know.  
4 And, so, we have a process that's been defined by the  
5 contract. And, it's that process that will yield the  
6 value.

7 Q. And, won't the value of the facility 20 years from now  
8 depend upon what the energy market is like 20 years  
9 from now?

10 A. (Long) That will be one factor, sure. The renewable  
11 value will be another. Capacity factor will be  
12 another. The fact that it's an existing plant will be  
13 another. There will be many factors.

14 Q. And, one of those factors is the law, is that correct?  
15 I believe I heard you say that.

16 A. (Long) As it pertains to PSNH's options perhaps, as a  
17 regulated company.

18 Q. And, so, if there is no -- if there are no RPS  
19 requirements or renewable subsidies available 20 years  
20 from now, what's that going to do to the value of the  
21 facility?

22 A. (Long) My opinion is that the facility will still have  
23 value. It will have value for the same reason any  
24 power plant has value, it produces a product that

1 consumers need. And, it does so in a way with an  
2 indigenous fuel source.

3 Q. And, what if the cost of operating with that indigenous  
4 fuel source is higher than operating with gas?

5 A. (Long) What if it isn't? I mean, that's -- those are  
6 all the things you'll consider in the future.

7 Q. So, sitting here today, you can't do any reasonable  
8 projection of what the value of that facility is going  
9 to be in 20 years?

10 A. (Long) I said, as the rebuttal -- as the rebuttal  
11 states, you can go by history, and power plants last  
12 much longer than 20 years. Why? Because they're  
13 economic, particularly ones whose the capital costs are  
14 pretty much paid for. So, experience would say that  
15 power plants last 40, 50, 60, maybe 70 years. And, so,  
16 20 years is actually a very short period for a power  
17 plant to life -- in a power plant's life. And, so,  
18 equipment is designed for much longer than that. So, I  
19 fully expect it to have substantial value at that time.  
20 But can I say today what that value is? No, I can't.

21 Q. But if that facility can't meet its operated costs?

22 A. (Long) If it can't, it can't. But, you know, it hasn't  
23 been the history. It hasn't been the history of mature  
24 plants. That's why we use the word "potential" value.

1 As to say, in all scenarios? No. There are, you know,  
2 if the plant has no value, then there's no application  
3 for the Cumulative Reduction Factor. But I think  
4 that's a very, very low likelihood of happening.

5 Q. So, can you place a dollar value on that? How much of  
6 an over-market -- can you place a percentage on that?  
7 How much of a percentage of an over-market energy  
8 payment will ratepayers recoup as a result of this  
9 Cumulative Reduction being based on the value of the  
10 facility?

11 A. (Long) We don't know --

12 MR. BERSAK: Objection, Mr. Chairman.  
13 That's been asked and answered already.

14 CHAIRMAN GETZ: Mr. Shulock, it does  
15 seem we've covered this line pretty thoroughly.

16 MR. SHULOCK: All right.

17 BY MR. SHULOCK:

18 Q. The Cumulative Reduction Account, does that include in  
19 it any value for the value time of money or the time  
20 value of money for ratepayers?

21 A. (Long) No, it doesn't, as we have stated in our  
22 response to data requests. And, that's one of the  
23 offers that Laidlaw has made, that they're willing to  
24 include interest, if the Commission wishes to entertain

1           that. That would, I think, "Exhibit 9".

2                           MR. SHULOCK: Are we going to cross on  
3 Exhibit 9 at this point, sir?

4                           CHAIRMAN GETZ: Well, why don't we do  
5 this. This may be a good time for the lunch recess. And,  
6 we will, as I promised earlier, we'll try to start the  
7 afternoon with the rulings on the various procedural  
8 issues. So, let's recess now and return at 1:45. Is  
9 there anything we need to address before we take the  
10 recess?

11   (No verbal response)

12                           CHAIRMAN GETZ: Hearing nothing, then  
13 we'll recess.

14   (Whereupon the lunch recess was taken at  
15 12:40 p.m. The Afternoon Session of  
16 Day 1 to resume under separate cover so  
17 designated.)

18  
19  
20  
21  
22  
23  
24