

## STATE OF NEW HAMPSHIRE

## PUBLIC UTILITIES COMMISSION

September 9, 2011 - 2:05 p.m.  
Concord, New Hampshire

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RE: DE 11-184  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:  
Joint Petition for Approval of Power  
Purchase and Sale Agreements and  
Settlement Agreement.  
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Clifton C. Below

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:  
Robert A. Bersak, Esq.  
Sarah B. Knowlton, Esq.

Reptg. the Wood-Fired IPPs:  
David J. Shulock, Esq. (Olson & Gould)  
David K. Wiesner, Esq. (Olson & Gould)

Reptg. Freedom Energy Logistics,  
Halifax-American Energy Company and  
PNE Energy Supply:  
James T. Rodier, Esq.

Reptg. Granite State Hydropower Assn:  
Rachel A. Goldwasser, Esq. (Orr & Reno)

COURT REPORTER: STEVEN E. PATNAUDE, LCR NO. 52

ORIGINAL

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

**Reptg. the Business & Industry Assn:**

Michael Licata

**Reptg. PUC Staff Advocates:**

F. Anne Ross, Esq.

Thomas C. Frantz, Director/Electric Div.

**Reptg. Dept. of Resources & Econ. Dev.:**

George Bald, Cmsr.

**Reptg. Residential Ratepayers:**

Meredith Hatfield, Esq., Consumer Advocate

Stephen Eckberg

Office of Consumer Advocate

**Reptg. PUC Staff:**

Edward N. Damon, Esq.

Steven E. Mullen, Asst. Dir./Electric Div.

Grant Siwinski, Electric Division

Al-Azad Iqbal, Electric Division

**I N D E X****PAGE NO.****STATEMENTS OF PRELIMINARY POSITION BY:**

Mr. Bersak 6, 24

Ms. Ross 11, 26

Cmsr. Bald 11, 26

Mr. Shulock 12, 27, 30

Mr. Rodier 13

Ms. Goldwasser 16

Mr. Licata 17

Ms. Hatfield 18, 31

Mr. Damon 19, 32

**STATEMENTS FROM THE PUBLIC BY:**

Rep. Garrity 20

Sen. Forrester 22

Mr. Courchesne 23

1                                    P R O C E E D I N G

2                                    CHAIRMAN GETZ:    Okay.    Good afternoon,  
3                                    everyone.    I will open the prehearing conference in Docket  
4                                    DE 11-184.    On August 23, 2011, Public Service Company of  
5                                    New Hampshire, Bridgewater Power Company, Pinetree Power  
6                                    Company, Pinetree Power-Tamworth, Whitefield Power &  
7                                    Light, and Indeck-Alexandria jointly filed a petition for  
8                                    approval of five power purchase agreements.    We issued an  
9                                    order of notice on August 25 setting the prehearing  
10                                    conference for this afternoon.

11                                    Among other things, the order of notice  
12                                    indicated that Commissioner Ignatius had disqualified  
13                                    herself from participation in this proceeding.    I want to  
14                                    address one preliminary matter with respect to that.    In  
15                                    preparation for the prehearing conference, Commissioner  
16                                    Below and I discussed the issue of the disqualification.  
17                                    And, we've determined to make application to the Governor,  
18                                    pursuant to RSA 363:20 for a Special Commissioner to sit  
19                                    on this case.    With respect to that issue, our intention  
20                                    is to forward a letter as soon as we can.    But I think  
21                                    that letter would be better informed if there is a  
22                                    decision with respect to what the procedural schedule will  
23                                    be.    I'll note for the record in this case, there are -- I  
24                                    haven't seen a particular request from the parties, there

1 are a number of public comments that have been filed  
2 urging expedited approval. So, when we go around the room  
3 hearing the positions of parties, with respect to the  
4 normal brief statement about their position, we'd also ask  
5 if there's any recommendation or agreement with respect to  
6 a procedural schedule. If there is something now that we  
7 can get on the record, that's great. Or, if it's a matter  
8 of something that would emerge from the technical session,  
9 then we'll deal with it that way. But I just think that  
10 the letter asking for a Special Commissioner would be more  
11 useful to the Governor and Council if there was an actual  
12 recitation of what the procedural schedule might be in  
13 this case. So, --

14 CMSR. BELOW: And, I would note that I  
15 concur with the Chair's point that we make an application  
16 for a Special Commissioner.

17 CHAIRMAN GETZ: I also note for the  
18 record that we have the affidavit of publication that has  
19 been filed. And, my record indicates that we have the  
20 OCA's notice of participation; we have petitions to  
21 intervene from -- one petition from Freedom Logistics --  
22 Freedom Energy Logistics, Halifax American Energy Company  
23 and PNE Energy Supply, a petition from Granite State  
24 Hydropower Association, and one as well from Business &

1 Industry Association. So, to the extent that the  
2 Petitioners, when they're speaking to their position, want  
3 to state their position with respect to those petitions to  
4 intervene, that would be useful as well.

5 And, I also note, to the extent that  
6 there is anyone who seeks to make a public comment today,  
7 what we will do is we'll hear from the Petitioners, then  
8 we'll hear from parties who have made a petition to  
9 intervene, then we will hear any public comment that  
10 anyone would like to make. And, then, we'll give the  
11 Petitioners the opportunity to speak last, which is  
12 consistent with our rules.

13 So, I think that covers all of the  
14 introductory matters. And, we'll turn to Mr. Bersak.

15 MR. BERSAK: Good afternoon, Chairman  
16 Getz and Commissioner Below. Did you want to take  
17 appearances or do you want to just go right into opening  
18 statements?

19 CHAIRMAN GETZ: Well, make your  
20 appearance and then give us everything you got.

21 MR. BERSAK: Excellent. On behalf of  
22 Public Service Company of New Hampshire, you have myself,  
23 Robert A. Bersak, and Sarah Knowlton, representing the  
24 Company here today. As you are aware, this docket

1 involves a follow-on to the proceedings we had in Docket  
2 Number 10-195, the proceeding relating to the construction  
3 and approval of a PPA for a new wood-fired generating  
4 station up in Berlin, New Hampshire, the so-called "Berlin  
5 Station".

6 The Commission is aware that its orders  
7 from that proceeding were under appeal to the Supreme  
8 Court of New Hampshire, and that those appeals were  
9 blocking the ability of the developers of Berlin Station  
10 to receive their financing. It turns out to be in the  
11 public interest of the state, as espoused by the Governor,  
12 by the Commissioner of the Department of Resources and  
13 Economic Development, by the entirety of the Executive  
14 Council and numerous legislators that the state really  
15 needs both the new station up in Berlin, the construction  
16 jobs, the taxes, the jobs, you know, in the forestry  
17 industry, as well as jobs in the existing wood-fired IPPs,  
18 to further the public policies and interests of the state.

19 We were asked to come together to try to  
20 determine whether there's a way to make all of that a  
21 reality. As a result of negotiations that were chaired  
22 and spurred on by the Governor, and all those other  
23 members of the state that I had listed, we were able to  
24 come up with a series of agreements that would allow the

1 development of the plant up in Berlin, would eliminate the  
2 appeal that was pending before the New Hampshire Supreme  
3 Court, and that would allow the existing wood IPPs to  
4 continue to operate for a period of time.

5 We've presented to the Commission five  
6 power purchase agreements that Public Service Company of  
7 New Hampshire and five of the wood IPPs have entered into,  
8 and those agreements are subject to the approval of this  
9 Commission, both as to the substance of those agreements,  
10 as well as to an ancillary Settlement Agreement and a  
11 ratemaking treatment as to how the costs of these deals  
12 would be accounted for and recovered by Public Service of  
13 New Hampshire.

14 We did file yesterday a follow-on  
15 pleading, which indicates that there were two conditions  
16 that were expressed in the Joint Petition that were  
17 precedent to the deals being and taking fruition. One, of  
18 course, is this Commission's approval of what we filed.  
19 But another condition was that the Berlin Station  
20 development actually reach a financial closing by a date  
21 certain, and that that closing had to include the funding  
22 of almost \$3 million in New Market Tax Credits that would  
23 benefit Coos County and the City of Berlin.

24 Well, we announced yesterday that that



1 financial closing has indeed occurred, that that financial  
2 condition to the effectiveness of the PPAs has been met,  
3 and that the millions of dollars in credits to the North  
4 Country have, in fact, been funded. So, we're very happy  
5 to report that. So, that's not anything that has to be  
6 considered any more by the Commission, because that  
7 condition has been met.

8 With respect to the terms of the PPAs,  
9 they're relatively short-term PPAs, but they are over 12  
10 months in duration. They are very simple. They require  
11 Public Service Company of New Hampshire to buy certain  
12 amounts of energy for certain periods of time. We do not  
13 buy the capacity from the plants, we do not buy any  
14 environmental attributes, such as renewable energy  
15 certificates. These are energy-only deals.

16 The Settlement Agreement that we ask the  
17 Commission to approve would have Public Service waive  
18 certain claims or ability to bring claims that are related  
19 to the prior docket, 10-195, and to the process that led  
20 up to these particular power purchase agreements. And,  
21 the ratemaking treatment that we've asked for is one that  
22 would make sure that, by entering into these arrangements,  
23 at the behest of the Governor and the other dignitaries in  
24 the state, that we do not wind up adversely impacting our

1 Energy Service rate. So, we've asked for the ability to  
2 transfer certain costs from our Energy Service rate to  
3 make room for the costs of these deals, such that the  
4 Energy Service rate is held harmless, but we are able to  
5 recover all the costs that these deals would incur.

6 Public Service has no objection to the  
7 participation by any of the -- either of the parties that  
8 have filed petitions for intervention. And, with respect  
9 to a schedule, the parties have kind of discussed a  
10 schedule that was proposed by the wood IPPs. So, I will  
11 defer to them to discuss scheduling matters with you.  
12 Thank you.

13 CHAIRMAN GETZ: Thank you. And, I'm  
14 sorry, any position on the petitions to intervene?

15 MR. BERSAK: Yes. I said that we have  
16 no objections to them.

17 CHAIRMAN GETZ: No objection to any of  
18 them. Okay. Great. Thank you. Well, I neglected to  
19 point out in my summary of the order of notice that the  
20 filing is also supported by the New Hampshire Department  
21 of Resources and Economic Development, and certain members  
22 of Commission Staff, and specifically that our General  
23 Counsel, Anne Ross, and the Director of our Electric  
24 Division, Tom Frantz, have been designated as "Staff

1 advocates".

2 So, with that, turn to Ms. Ross or  
3 Commissioner Bald?

4 MS. ROSS: Good morning -- or, good  
5 afternoon, Commissioners. I'm Anne Ross. I am appearing  
6 on behalf of the designated Staff advocates, that is  
7 myself and Tom Frantz. We are comfortable with the  
8 statement that PSNH has made that describes our position  
9 on the Joint Petition, as summarized in Mr. Frantz's  
10 testimony.

11 Oh. And, with regard to the expedited  
12 treatment, we do request expedited treatment of this  
13 docket. It's fairly time-sensitive. Some of the purchase  
14 power agreements erode as the decision is delayed. So, to  
15 bring the full benefits of the Settlement to the parties,  
16 the sooner we can reach a resolution on the proposal the  
17 better.

18 The schedule that was proposed, that has  
19 been proposed by the Wood IPPs is fine with the Staff  
20 Advocates. And, we have no objections to any of the  
21 requests for intervention.

22 CHAIRMAN GETZ: Thank you. Commissioner  
23 Bald.

24 CMSR. BALD: Thank you, Mr. Chairman.

1 My name is George Bald, Commissioner of the Department of  
2 Resources and Economic Development. Anne did such a  
3 wonderful job, I just would agree with everything that she  
4 just said.

5 CHAIRMAN GETZ: Thank you. Mr. Shulock.

6 MR. SHULOCK: Commissioner, my name is  
7 David Shulock. And, I have with me David Wiesner. We're  
8 both from the firm of Olson & Gould, here in Concord.  
9 And, we represent the six wood IPPs. That would be  
10 Bridgewater Power Company, LP, Pinetree Power, Inc.,  
11 Pinetree Power-Tamworth, Inc., Springfield Power, LLC, DG  
12 Whitefield, LLC, and Indeck-Alexandria, LLC. And, we're,  
13 of course, here to ask the Commission to approve the PPAs  
14 and the cost recovery mechanism proposed by PSNH, and to  
15 request expedited treatment for this case. We have no  
16 objection to any of the requests for intervention in the  
17 case.

18 And, then, in terms of the procedural  
19 schedule, what we have passed around to the parties is a  
20 schedule that commences on Monday with recovery and ends  
21 with hearings the week of November 28th.

22 CHAIRMAN GETZ: Is there a copy that we  
23 can --

24 MR. SHULOCK: Yes, I have that here.

1 Not all of the parties have agreed to that schedule,  
2 however.

3 CHAIRMAN GETZ: We'll give them an  
4 opportunity to respond. I just want to get a chance to  
5 see what the subsidiary dates are. Thank you.

6 Is there anything further, Mr. Shulock?

7 MR. SHULOCK: No. Thank you.

8 CHAIRMAN GETZ: Thank you. Mr. Rodier.

9 MR. RODIER: Thank you, Mr. Chairman. I  
10 represent Freedom Logistics, Halifax American Energy  
11 Company, and PNE Power Supply. Just a little bit of a  
12 brief background here, even though there hasn't been any  
13 interventions [objections?], you still have to make a  
14 decision. So, I just want to mention all three of these  
15 are entities that are controlled by August Fromuth, who,  
16 as the Commission may be aware, until recently was Vice  
17 Chairman of NEPOOL and the Chairman of the End Users Group  
18 at NEPOOL. These are his companies.

19 The Freedom entity manages the  
20 relationship of large end users with ISO-New England.  
21 Those that do not have a competitive supplier, they go  
22 straight to the wholesale market to buy their power. For  
23 example, the Union Leader and St. Anselms College would be  
24 two of those clients.

1                   Halifax American Energy Company, as the  
2                   Commission may be aware, works with South Jersey Energy  
3                   Company, that's a retail supplier. A couple of the  
4                   clients there would be Stonyfield Farm and University of  
5                   Southern New Hampshire, to name a few. The Halifax  
6                   entity, Halifax, HAEC/SJE, South Jersey, were just, as the  
7                   Commission may be aware, were just awarded the contract to  
8                   sell power to the State and the City of Concord. And the  
9                   --

10                   (Court reporter interruption)

11                   MR. RODIER: I think I said HAEC/SJE  
12                   were recently awarded the contract to sell -- the electric  
13                   contract to sell to the State and the City of Concord.  
14                   The power is coming from Concord Power & Steam. And, the  
15                   Freedom entity is going to manage that.

16                   PNE recently received its financing. I  
17                   think we're going to imminently get our license from the  
18                   Commission to sell electricity there. The intention is to  
19                   sell to Public Service's retail customers starting on  
20                   January 1st, when the rates we expect are going to take a  
21                   significant leap upward on January 1st. The interest --  
22                   so, there are some substantial interests here at stake.

23                   But I just want to go over PNE real  
24                   quick. You know, PNE, when the Commission's decision in

1 10-160 comes out and says "no, we're not going to move  
2 costs and dollars from the Energy Service rate and put it  
3 on the wires", that was a big boost for PNE to get its  
4 financing. Then, the first thing that we see is the  
5 request to move costs from the Energy Service rate to the  
6 wires, which is very concerning as to what this, you know,  
7 could potentially lead to.

8 So, my only thought was that, first of  
9 all, I'm in favor of an expedited proceeding. Based on my  
10 own experience, I know pretty well what the -- what the  
11 wood-fired guys had to go through to get this deal from  
12 Public Service. I think they deserve to be commended.  
13 And, I think they -- I would like to see if they could get  
14 an expeditious approval so they can start getting the  
15 funds that they need to stay alive.

16 However, with respect to the other key  
17 issue here, the moving of the so-called "bypassable --  
18 "nonbypassable charge" that's created here, at a minimum,  
19 I think it should be without prejudice or without  
20 precedent to anything in other Commission proceedings. It  
21 should last only as long as necessary, you know, to carry  
22 out these agreements. And, it should not in any way, I'd  
23 like the Commission to explicitly say it's not to be in  
24 derogation in any way of their order in the 10-160

1 customer migration docket. So, I think that would satisfy  
2 our concerns and issues.

3 Just to conclude, the entities I  
4 represent have substantial interests that could be  
5 impacted here. That's (a). And, (b), the Commission can  
6 also, of course, decide to allow somebody to intervene  
7 just if it's in the public interest. So, on that basis,  
8 you know, I would ask that you allow these interventions  
9 and consider, you know, the comments that I've made.  
10 Thank you very much.

11 CHAIRMAN GETZ: And, just want to  
12 clarify, though, with respect to the substantive position,  
13 your issues are more about the issues of rate recovery and  
14 less about the terms of the agreements themselves?

15 MR. RODIER: We have no interest in  
16 meddling with the agreements themselves. It's all about  
17 what, you know, there's going to be a filing coming in,  
18 Mr. Chairman, in about three weeks to set the rate for  
19 next year for the Energy Service rate. What are we going  
20 to see? You know, what could this lead to? That's the  
21 only issue.

22 CHAIRMAN GETZ: All right. Thank you.  
23 Ms. Goldwasser.

24 MS. GOLDWASSER: Mr. Chairman,



1 Commissioner Below, my name is Rachel Goldwasser. I work  
2 for the law firm of Orr & Reno. I am here on behalf of  
3 Granite State Hydropower Association, which is a  
4 membership organization representing approximately 45  
5 small hydropower projects located in New Hampshire. We  
6 submitted a motion for intervention.

7 I'll start with the substance. On the  
8 substance, we take no position on the merits. And, we  
9 have no objection to the schedule that's been proposed.

10 As you know -- and, we also don't object  
11 to the request for confidential treatment or the concerns  
12 for confidential treatment with respect to the agreements  
13 as they're proposed.

14 Granite State Hydropower Association's  
15 members have interest in the market for purchase and sale  
16 agreements between independent power producers and  
17 load-serving entities, and in the competitive market for  
18 energy in New Hampshire. And, for those reasons, we  
19 request intervenor status today.

20 CHAIRMAN GETZ: Okay. Thank you.  
21 Mr. Licata.

22 MR. LICATA: Thank you, Mr. Chairman,  
23 Commissioner Below. My name is Mike Licata. I'm here on  
24 behalf of the Business & Industry Association. The BIA is

1 a not-for-profit business association, which advocates on  
2 behalf of business interests within the State of New  
3 Hampshire. Our membership is comprised of over 400  
4 businesses, representing a broad cross-section of the  
5 commercial and industrial community in New Hampshire.

6 Today, at this point, we do not have an  
7 official position on the merits of the proposed docket.  
8 We are requesting intervention, intervenor status, so that  
9 we can closely monitor the proceedings and provide input,  
10 if we feel compelled to do so at a later date, when we  
11 might have a more formal position.

12 And, of particular interest to our  
13 membership is the concept of shifting the above-market  
14 costs of these proposed contracts onto the distribution  
15 rate, as opposed to the Energy Service rate.

16 CHAIRMAN GETZ: Thank you.

17 MR. LICATA: Thank you. Ms. Hatfield.

18 MS. HATFIELD: Thank you, Mr. Chairman.

19 Good afternoon, Commissioners. My name is Meredith  
20 Hatfield. And, I'm here on behalf of the Office of  
21 Consumer Advocate. And, our office represents the  
22 interests of residential ratepayers. With me from the  
23 office is Steve Eckberg.

24 Our office does not have a position at

1 this point in the proceeding. We are still reviewing the  
2 filing, and intend to engage in discovery. We have  
3 received a copy late yesterday of the wood IPPs' schedule.  
4 And, while we certainly will cooperate in efforts to make  
5 this as an expedited schedule, it is a very tight  
6 schedule, especially in light of the significant legal and  
7 financial issues in this case.

8 With respect to interventions, we have  
9 no objections. And, with respect to the Motion for  
10 Confidential Treatment, we aren't prepared to give you our  
11 position at this time. But we would just note that we  
12 will be reviewing it in light of the Commission's decision  
13 in DE 10-195, where the Commission made public all of the  
14 terms of the PPA between PSNH and what is now called the  
15 "Berlin Station". So, I would just note that for the  
16 Commission. Thank you.

17 CHAIRMAN GETZ: Thank you. Mr. Damon.

18 MR. DAMON: Thank you, Mr. Chairman. My  
19 name is Edward Damon. And, with me this afternoon are  
20 Steven Mullen, Grant Siwinski, and Al-Azad Iqbal. We  
21 represent what we call the "Non-Advocate Staff", to use  
22 the same nomenclature that was used in the FairPoint  
23 reorganization docket last year. Non-Advocate Staff has  
24 already, on August 25th, issued a first set of data

1 requests to the parties, and those have all been responded  
2 to. We intend to do further discovery as well. And, we,  
3 as always, will carefully review the facts and develop the  
4 facts and so forth as usual.

5 We have been provided with a procedural  
6 schedule, which I presume is the same as the one that  
7 Mr. Shulock presented to you. The only possible addition  
8 that Staff would suggest regarding that is that there is  
9 no space on the schedule for a technical session. But, in  
10 talking with Mr. Shulock this morning, he is cooperative  
11 and agreeable, I believe, to holding a technical session,  
12 if, you know, that would be deemed necessary and helpful  
13 to develop the facts and speed this process along.

14 CHAIRMAN GETZ: Thank you. Okay. With  
15 respect to the petitions to intervene, we will grant all  
16 of the petitions to intervene, finding that it's in the  
17 interest of justice to do so.

18 So, at this point then, it's opportunity  
19 for public comment. Is there anyone who would like to  
20 speak to the filing? Representative Garrity.

21 REP. GARRITY: Thank you, Mr. Chairman,  
22 and thank you, Commissioner Below. My name is  
23 Representative Jim Garrity, from Atkinson. I'm the  
24 Chairman of the House Science, Technology and Energy

1 Committee. And, I'm here as a public policy maker in the  
2 energy use base to oppose this agreement. Should I make  
3 my comments now?

4 CHAIRMAN GETZ: Please.

5 REP. GARRITY: Okay. Thanks. I oppose  
6 the agreement because it runs counter to the legislative  
7 intent of electric restructuring, which was to lower end  
8 use electric rates through increased competition, RSA  
9 374-F:1, I, Purpose statement, and I'll quote: "The most  
10 compelling reason to restructure the New Hampshire  
11 electric utility industry is to reduce costs for all  
12 consumers of electricity by harnessing the power of  
13 competitive markets."

14 This agreement is a political issue, not  
15 a power issue. And, it is not in the public interest. It  
16 asks for a nonbypassable charge that could amount to  
17 \$20 million over the term of the agreements. The  
18 Commission just rejected a nonbypassable charge last month  
19 in Docket DE 10-160, the PSNH customer migration docket.  
20 It's not in the public interest of ratepayers, who I care  
21 very much about, to have to subsidize above-market costs,  
22 when PSNH can purchase power for less in the competitive  
23 market. It punishes ratepayers who have already migrated  
24 away from PSNH by forcing them to pay this nonbypassable

1 charge. It's unfair to other merchant competitors in the  
2 power market, who do not have the advantage of special  
3 political deals. And, it's unfair to every other business  
4 in New Hampshire, who do not have the advantage of  
5 powerful politicians cutting special deals for them.

6 So, for all of those reasons, I would  
7 ask you to reject this, this agreement.

8 CHAIRMAN GETZ: Thank you. Anyone else  
9 who would like to make a public comment? Okay. Then,  
10 we'll -- sir?

11 SEN. FORRESTER: Good afternoon,  
12 Commissioners. My name is Jeanie Forrester. I am the  
13 Senator from District 2.

14 CHAIRMAN GETZ: Good afternoon, Senator.

15 SEN. FORRESTER: And, I support this,  
16 these power purchase agreements that PSNH has worked out  
17 with the IPPs. I would urge you to expedite this and  
18 approve it. I was fortunate enough to be in the room as  
19 these negotiations were going on. And, from my  
20 perspective, we've got a real problem in this state right  
21 now with jobs and the economy. This will help the IPPs  
22 and ensure that jobs stay in the North Country. And, so,  
23 I ask you to expedite this.

24 CHAIRMAN GETZ: Thank you. Is there

1 anyone else? Sir.

2 MR. COURCHESNE: Commissioners, good  
3 afternoon. My name is Christophe Courchesne. I'm a Staff  
4 Attorney with the Conservation Law Foundation. And, while  
5 we have taken no position and are still evaluating the  
6 filings in this matter, we want to state for the record  
7 that we support renewable energy PPAs as a mechanism to  
8 promote development of renewable energy and support of  
9 renewable energy in New Hampshire. However, we share many  
10 of the concerns that have been voiced thus far regarding  
11 the nonbypassable charge, and we're continuing to evaluate  
12 the filings.

13 CHAIRMAN GETZ: Okay. Thank you.  
14 Anyone else?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. Hearing nothing,  
17 then it's an opportunity for the Petitioners to respond to  
18 anything they have heard. But one issue I would like to  
19 raise for the Petitioners with respect to the procedural  
20 schedule. This procedural schedule provides for rebuttal  
21 testimony. And, I guess my question is, whether that's  
22 necessary? And, if it turns out that it's not necessary,  
23 would it be possible to have the hearing earlier or to  
24 provide a backup plan for having the hearing earlier, if

1 indeed there is no rebuttal? So, any thoughts on anything  
2 else that's been said after the last time you spoke and  
3 any response to that question.

4 MR. BERSAK: Well, thank you, Mr.  
5 Chairman. With respect to the schedule, Public Service  
6 will be very flexible. We'll work with the parties and  
7 the Commission to try to move this proceeding along as  
8 rapidly as possible. If it turns out there is no need to  
9 rebut, then we won't rebut, and we can move the hearing to  
10 an earlier date. There will be a tech session afterwards,  
11 where we can meet with the now -- the parties that have  
12 now been granted intervenor status, to make sure we're all  
13 on the same page with respect to a schedule, and we can  
14 present that to you immediately after the tech schedule  
15 has ended -- or, I mean, the tech session has ended.

16 Just one other procedural matter is  
17 that, as Mr. Damon indicated, that discovery has already  
18 started, and that the Company and others have already  
19 responded to certain discovery questions. Some of those  
20 responses were responded to and they included confidential  
21 information. Pursuant to the Commission's rules, we  
22 provided the information and indicated we were going to  
23 file a Motion for Confidential Treatment at or before this  
24 proceeding. Since the issue of confidentiality is the



1 exact, you know, involve the exact same material and the  
2 same issues that are contained in the Wood IPPs' Motion  
3 for Confidential Treatment that's already pending before  
4 the Commission, we didn't feel it was necessary to file  
5 repetitive motions. So, we'd just like to note that our  
6 confidential responses to discovery would be governed by  
7 however the Commission rules on the outstanding Motion for  
8 Confidential Treatment that was filed on the 23rd of  
9 August.

10 CHAIRMAN GETZ: Thank you. Ms. Ross.

11 CMSR. BELOW: Wait a second. Could you  
12 clarify that a bit? Are you saying that, to the extent  
13 you've responded to discovery requests that you may seek  
14 confidential treatment for, you sort of want to add those  
15 to the currently pending motion?

16 MR. BERSAK: As a matter -- there was  
17 only one question that PSNH responded to, and the  
18 materials included in the response were the exact same  
19 confidential information that had been redacted from the  
20 PPAs that are pending before the Commission. So, to the  
21 extent that the Commission finds that it is, in fact,  
22 going to grant --

23 CHAIRMAN GETZ: Substantively the same  
24 information, but residing in a different document?

1 MR. BERSAK: Exactly. You got it.

2 That's it.

3 CHAIRMAN GETZ: Ms. Ross -- oh, did you  
4 have --

5 CMSR. BELOW: No, that clarifies it.

6 MS. ROSS: I don't think, at this point,  
7 that Staff Advocates have anything to add. And, with  
8 regard to rebuttal testimony, I doubt that we're going to  
9 have to have rebuttal testimony. There may be a need to  
10 brief some of the issues, because some of the ratemaking  
11 issues might be considered legal issues. But that could  
12 certainly be handled within the current schedule. And, I  
13 think that's all I need to address right now.

14 With regard to confidentiality, we will  
15 allow the Wood IPPs to promote their request for  
16 confidential treatment, and ask that the information that  
17 is derived from that request and is contained in Mr.  
18 Frantz's testimony be treated however the Commission  
19 determines is appropriate with regard to the underlying  
20 motion by the Woods. So, we won't make a separate motion.  
21 We'll rely on their arguments.

22 CHAIRMAN GETZ: Okay. Thank you.  
23 Commissioner Bald.

24 CMSR. BALD: I don't have anything to

1 add, Mr. Chair.

2 CHAIRMAN GETZ: Thank you. Mr. Shulock.

3 MR. SHULOCK: With regard to the  
4 procedural schedule, we would be happy if the hearings  
5 were held earlier, and we'll be flexible in that regard to  
6 help set up a schedule that accomplishes that, if  
7 possible.

8 CHAIRMAN GETZ: Well, I guess my  
9 thinking on this basically is this. You know, if the  
10 parties are seeking expedited treatment, if they want to  
11 waive rebuttal testimony, then that would certainly be  
12 something we would consider.

13 MR. SHULOCK: And, with regard to  
14 confidentiality, we filed a paper motion, and we would  
15 rely on the arguments that we made in that motion. And,  
16 we have no objections to the oral motions that were made  
17 by PSNH and Staff to include their discovery responses  
18 under the umbrella of that motion.

19 In addition, we have answered some  
20 interrogatories for which -- or, I'm sorry, data requests  
21 for which we have claimed confidential treatment. These  
22 also contain commercial financial information and  
23 information about other agreements that are not before the  
24 Commission. And, we would like to include those, too, if

1       there are no objections, so that it's all resolved up  
2       front. And, if a motion for rehearing needs to be filed,  
3       it could be filed early.

4                   The one thing that we don't have, that  
5       hasn't been submitted to you, are copies of those data  
6       requests. They have been submitted to your Staff. And,  
7       I'm just wondering whether we need to provide copies of  
8       those data requests to you so that you can rule?

9                   CHAIRMAN GETZ: Well, certainly, to make  
10      a ruling on --

11                  MR. SHULOCK: Okay.

12                  CHAIRMAN GETZ: -- on what information  
13      should be protected --

14                  MR. SHULOCK: Sometimes a description of  
15      what is contained in them suffices under the rules. It's  
16      just a question of whether you actually want to see them.  
17      I'm happy to provide them later today.

18                  And, then, with regard to judging this  
19      case under the same light as the Laidlaw case was, these  
20      agreements are significantly different from the Laidlaw  
21      agreement, especially in terms of the term of that  
22      agreement. One of the reasons why it was not as harmful  
23      to release admittedly confidential and proprietary  
24      information in which that company had a privacy interest

1 was because the term of that agreement was so long. And,  
2 it was unlikely that that party would be back out in the  
3 market negotiating another agreement any time soon. And,  
4 so, that party's competitive position was not as harmed by  
5 the publication of that information as it would be in this  
6 case. Because these contracts are much shorter, and these  
7 facilities will be back out in the market looking for  
8 agreements almost immediately. So, a publication of that  
9 information now would be very harmful to that competitive  
10 interest.

11 And, I can't speak for PSNH, but what  
12 they're going to agree to in the short term may be quite  
13 different from what they might agree to in the long term,  
14 in terms of the publication of that type of financial deal  
15 information.

16 So, I, for one, see a great difference  
17 between this case and the Laidlaw case, based on just the  
18 duration of the term.

19 CHAIRMAN GETZ: Okay. Thank you. Well,  
20 let me give the opportunity for anyone else who wants to  
21 speak to two things, either the issues of confidentiality  
22 and/or the procedural schedule. But, I think, based on  
23 what I've heard, and certainly we're going to have to take  
24 under advisement the issue of the Motion for

1 Confidentiality. And, to the extent you want to discuss  
2 that, those issues further in the tech session, and, if  
3 there's agreement or disagreement I think that would  
4 clarify what's gone on this afternoon, that would helpful.

5 MR. SHULOCK: If I may? When we filed  
6 that Motion for Confidential Treatment, there were not any  
7 intervenors in the case. We now know that there are  
8 competitors who are part of this proceeding. And, we  
9 would ask that the information be kept private from them  
10 as well, unless they have an objection to that. And, we  
11 might have to work something out.

12 CHAIRMAN GETZ: Well, I'd ask the  
13 parties to address that in the tech session.

14 MR. RODIER: Who's he referring to, Mr.  
15 Chairman? Is it me or her?

16 (Multiple parties speaking at the same  
17 time.)

18 CHAIRMAN GETZ: Well, let's -- wait.  
19 Let's --

20 MR. RODIER: Sorry.

21 CHAIRMAN GETZ: Cross talk doesn't, --

22 MR. RODIER: I apologize.

23 CHAIRMAN GETZ: -- especially from the  
24 back of the room, doesn't help our court stenographer put

1 together his usual transcript, usual excellent transcript.

2 MR. RODIER: I apologize.

3 CHAIRMAN GETZ: So, do you have a  
4 statement, Mr. Rodier, about this or is this something  
5 that can be addressed in the tech session?

6 MR. RODIER: No. I should have never  
7 said anything in the first place. I'm sorry.

8 CHAIRMAN GETZ: So, anything else about  
9 confidentiality or scheduling?

10 MR. RODIER: No.

11 CHAIRMAN GETZ: Ms. Hatfield, did you  
12 have something?

13 MS. HATFIELD: Yes. Thank you, Mr.  
14 Chairman. I'm willing to discuss this at the tech  
15 session, but I just did want -- I don't want to waive my  
16 ability to raise this later. That I think it is a little  
17 problematic to file one Motion for Confidentiality, and  
18 then want it to be an umbrella and have other things come  
19 in under it. So, I think there is probably a way that we  
20 can very clearly identify what comes under it. But I just  
21 wanted to raise that, because it just -- it seems like  
22 it's less than clear what would be covered under that  
23 request.

24 CHAIRMAN GETZ: All right. Anything

1 further? Mr. Damon.

2 MR. DAMON: Yes. Just one comment  
3 relative to the confidentiality. The motion that's been  
4 filed refers to information in the power purchase  
5 agreements and portions of Exhibit B to the Settlement  
6 Agreement. I think it is true, as Mr. Shulock pointed  
7 out, that there are a couple of other pieces of  
8 information in response to Staff's data requests that do  
9 not fall within the description that I've just read. So  
10 that I think for that information, or information that's  
11 not described or derived from the information in here,  
12 there probably should be a separate motion filed.

13 CHAIRMAN GETZ: All right. Well, let me  
14 return to this issue then and the Motion for  
15 Confidentiality. I ask that the parties see if you can  
16 come to a meeting of the minds about that, and let us know  
17 something in writing about this, if there's a joint  
18 recommendation. I think separately what I -- and I assume  
19 that may take a little while to put that together, but  
20 separately I'm interested in, out of the tech session, if  
21 there's an agreement on the procedural schedule, I would  
22 just ask Mr. Damon that you communicate that to us in  
23 writing as soon as you can, because I'd like to make that  
24 information part of the application to the Governor and



1 Council with respect to a Special Commissioner.

2 So, is there anything further to address  
3 this afternoon?

4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Hearing nothing,  
6 then we'll close the prehearing conference and take the  
7 matters under advisement. Thank you, everyone.

8 MR. BERSAK: Thank you.

9 (Whereupon the prehearing conference  
10 ended at 2:44 p.m., and a technical  
11 session was held thereafter.)  
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