

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

February 14, 2013 - 10:07 a.m.
Concord, New Hampshire

RE: DE 13-021
ELECTRIC RENEWABLE PORTFOLIO STANDARD:
RSA 362-F:4, V and VI, Adjustments
to Class I and Class III Renewable
Portfolio Requirements
(Hearing to receive public comment)

PRESENT: Commissioner Michael D. Harrington, Presiding
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: (No appearances taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

PROCEEDING

CMSR. HARRINGTON: We're here this morning on Docket DE 13-021, Electric Renewable Portfolio Standards. On January 18th, the Commission issued an order in this docket scheduling a prehearing conference for today for the purpose of hearing comments on whether it's appropriate for the Commission to adjust Class III renewable portfolio requirements.

The Commission has determined, in lieu of the prehearing conference, that we will hold a public hearing today for the purpose of receiving public comment regarding the appropriateness of the Commission to adjust Class III renewable portfolio requirements.

On January 31st, the Commission determined it is also necessary to address whether it is appropriate to accelerate or delay up to one year any given year's incremental increase in Class I renewable portfolio requirements pursuant to RSA 362-F:4, V, and to receive public comment on that issue.

We just wanted to make it clear that this, today's procedure, will be the hearing as required by statute for both of those. We're going to try to break this up into two separate subsets, if you will, just for the sake of continuity, to make it a little bit easier to

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follow. Because we're hoping that the -- addressing whether it was appropriate to delay up to one year any given year's incremental increase in Class 1 renewable portfolio standards will go a little faster, and we're going to start with that.

And, that basically evolves from SB 218, which providers of electricity would have to purchase 0.2 percent of the delivered electricity with useful thermal renewable energy certificates, or make a payment of \$25 per megawatt-hour in alternative compliance payments to the Renewable Energy Fund. The main reason for this is the Commission has determined that, due to technical challenges with thermal metering standards, the rulemaking required by the statute will not be completed in time to certify facilities to qualify for the production of useful thermal energy in 2013. As a result, providers of electricity will have to make alternative compliance payments to the Renewable Energy Fund to comply with the new requirement for 2013. The Commission is, therefore, expanding the public comment hearing scheduled for today as to whether it's reasonable to delay the implementation of the new useful thermal REC requirement for one year until 2014 to allow sufficient time to develop and implement rules.

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1 And, I guess, to start with, there were
2 a number of intervenors on this. I'm just going to go
3 quickly through them. There was the New Hampshire
4 Electric Co-op; Liberty Utilities; Robert Olson for
5 various power companies; Public Service of New Hampshire;
6 the Consumer Advocate; the Retail Energy Supply
7 Association. And, all intervenors will be granted.

8 And, this is also, as it is a public
9 hearing, we will be taking statements from anybody in the
10 public who would like to speak up as well. Just for the
11 purpose, there's a couple of ground rules. We will be,
12 obviously, taking verbal comments today on both subjects,
13 but we will also be asking that, if anyone has written
14 comments, that they provide those comments by a week from
15 today, which would be the 21st of February.

16 And, just for how this will go, like I
17 said, we'll start with the issue of adjusting the Class I,
18 i.e. the thermal requirement. And, we'll allow everybody
19 that wants to speak a chance to speak, and then one chance
20 to go around again, if someone wants to rebut or clarify
21 what someone else has said. So, I'm not going to take
22 appearances, because I think what we'll just do is allow
23 people to identify themselves as it comes up. And, we're
24 going to simply go around the room.

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1 since we're sticking with the Class I thing, we'll begin
2 there. And, initially, we wanted to note a concern that
3 PSNH has that, looking at 362-F:4, V, it reads: "For good
4 cause, and after notice and a hearing, the Commission may
5 accelerate or delay by up to one year, any given year's
6 incremental increase in Class I or II renewable portfolio
7 standard requirements under 362-F:3."

8 And, at least initially, it appears that
9 that, I'll call it, I guess, a "waiver" provision, though
10 it's not really that, but just for ease, applies to Class
11 I as a whole. And, since the thermal RECs are a subset of
12 Class I, it appears that, to the extent the Commission
13 would accelerate or delay under that provision, it would
14 have to do so for the entirety of Class I, and not just
15 for the thermal RECs, at least as we read the statute
16 right now.

17 So, assuming that to be the case, then
18 PSNH would not be in favor of delaying those, that REC
19 requirement for a year, because it would affect the
20 entirety of that class. There's a lot of things in that
21 class, a lot of folks have made a lot of plans, including
22 PSNH, based around what is in Class I. And, so, to that
23 extent, we would not be in favor of that delay.

CMSR. SCOTT: Attorney Fossum, if indeed

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1 And, with that, Commissioner Scott, do
2 you have anything you would like to add to start with?

CMSR. SCOTT: No.

4 CMSR. HARRINGTON: So, why don't we
5 start with the first gentleman here. Could you please
6 identify yourself, and if you represent anybody. And, if
7 you would like to speak, this is on, again, the issue of
8 moving the Class I standards, i.e. the lack of rules to
9 deal with the thermal renewable requirements. And, not
10 speaking out does not mean you don't have a chance to
11 speak on the other subjects, because we will do this
12 twice.

13 MR. ORIO: Yes. Thank you. My name is
14 Martin Orio. And, I'm representing the New England
15 Geothermal Professional Association. And, I'm just here
16 more to listen, to see what the direction will be.
17 Certainly interested as a stakeholder in the new thermal
18 REC opportunity, and want to be sure that our interests
19 are served. So, I'm here to listen. And, if I have a
20 rebuttal, I'll certainly come back around.

CMSR. HARRINGTON: Thank you.

MR. ORIO: Thank you.

23 MR. FOSSUM: Good morning. Matthew
24 Fossum, for Public Service Company of New Hampshire. And,

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1 the interpretation, however, was that we were able to
2 delay just that subset of Class I, is PSNH in favor of
3 that, if that were the case?

4 MR. FOSSUM: It's my understanding that
5 PSNH doesn't have a strong -- if, in fact, the Commission
6 can delay simply the thermal subset of Class I, PSNH
7 doesn't have a strong feeling one way or the other about
8 that. So, essentially, we have no position on the very
9 limited issue of the Class I thermals.

CMSR. SCOTT: Thank you.

11 CMSR. HARRINGTON: Next who would like
12 to comment on this?

13 MR. WARSHAW: John Warshaw, from Liberty
14 Utilities. And, Liberty Utilities is in favor of delaying
15 the implementation of the thermal requirement for at least
16 a year. And, on that subject, that's all I have.

17 CMSR. HARRINGTON: Thank you. To the
18 back of the room, I guess.

19 MR. NIEBLING: Thank you. Commissioner
20 Harrington, Commissioner Scott, good morning. My name is
21 Charles Niebling. I'm General Manager of New England Wood
22 Pellet, Jaffrey, New Hampshire. We're a manufacturer of
23 wood pellet fuels. Had a great deal to do over the years
24 with the concept of addition of thermal to the RPS,

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1 starting with testimony back in 2006/2007 on the original
2 legislation. And, having worked six or seven years on it,
3 I'm certainly disappointed to see the proposal to delay
4 the implementation of the administrative rulemaking to
5 effect the addition of thermal to the RPS Class I.

6 I'm respectful of the issues that
7 apparently have prompted the Commissioners to propose a
8 delay, namely the technical issues around some of the
9 unique complexities with metering thermal energy. I don't
10 think they're -- I don't think it's rocket science. I
11 think it can be overcome. I also think that, if the first
12 effort at rulemaking to implement this provision isn't
13 exactly perfect, rulemaking is a dynamic, ongoing
14 process, the Commission can always revisit the rules at a
15 point in the future.

16 I'm sensitive to the fact that there is
17 concern, given the time necessary to do an appropriate
18 job, that it may predispose the utilities to having to
19 make ACP payments in year one. I certainly recognize, as
20 I think everyone does, the sensitivity around that issue.
21 I would remind the Commission that the thermal class was
22 structured as a carve-out from the preexisting utility
23 obligation in Class I set in the statute at a
24 significantly lower ACP, and that was done intentionally,
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1 stakeholder draft of rules on December 22nd. I think, had
2 there been more of an effort on the part of the Staff, I
3 think a lot more technical assistance would have been
4 forthcoming. But, be that as it may, we're where we are.

5 And, I guess my main issue is that, if
6 you should decide to delay this, what happens to the
7 two-tenths of one percent thermal allocation in 2013,
8 which was explicitly identified and authorized in the
9 statute, it's a reflection of legislative intent. If 362
10 -- if 362-F, IV -- I'm sorry, 4, V, gives you the
11 authority to accelerate or delay, then I hope implicit in
12 that authority is the ability to take that two cent --
13 two-tenths and allocate it to the four-tenths, which is
14 the allocation set forth in the statute for 2014. So,
15 rather than dismiss it altogether and lose that, that
16 modest -- modest allocation for 2013, I hope that it
17 doesn't get lost and is added to 2014, or perhaps prorated
18 over the first two years or something like that.

19 You know, the carve-out is a very small
20 provision. It is, for all practical purposes, a pilot
21 program. New Hampshire has shown significant leadership
22 in its intention to incorporate a full thermal component
23 on a parity basis with electricity in its RPS Program.
24 And, for that, I commend the Legislature and the
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1 to enable the addition of thermal at a lower ratepayer
2 cost. All else being equal, it would cost ratepayers
3 less. It didn't add utility obligation to Class I, it
4 simply took a small piece of the existing electric
5 obligation and allocated it to thermal, at an ACP of \$25 a
6 megawatt-hour versus 55, as was put in place with Senate
7 Bill 218 for the electric component of Class I.

8 So, regardless of whether utilities pay
9 ACP in year one, it -- and I don't know what the market
10 value of RECs are for electric currently in Class I or
11 what they're anticipated to be, but it is intentionally at
12 a significantly lower cost to the utilities, and
13 ultimately to the ratepayers that foot the bill.

14 I think we're overall eager to move as
15 expeditiously as we can. I hope that a delay of a year
16 doesn't necessarily take a year, if that's the decision
17 the Commission makes. I hope that the Staff will continue
18 to move as efficiently as possible to develop the
19 administrative rules. Certainly, there's a lot of
20 interest and support and willingness to help.

21 And, I will just point out that that --
22 that not a lot of assistance from the private sector was
23 sought, beyond the stakeholder meeting in early August,
24 and the issuance of the -- of the draft sort of
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1 Commission.

2 I hope that -- I hope that you won't
3 decide to delay this provision, but, if you do, I hope
4 that you'll hold onto that two-tenths, and we won't lose
5 that, that allocation, to the sands of time.

6 So, with that, thank you very much for
7 the opportunity to offer these comments. If you have any
8 questions, I'd be happy to answer them. Thank you.

9 CMSR. HARRINGTON: Who's next please?

10 MR. STOCK: Good morning. For the
11 record, my name is Jasen Stock. I'm with the New
12 Hampshire Timberland Owners Association, and want to thank
13 you for the opportunity to speak to this docket. For the
14 sake of time, I'm not going to echo everything that
15 Mr. Niebling had said, but I do concur with his thoughts
16 and his comments, specifically regarding the concept of
17 taking the two-tenths of a percent and rolling that --
18 rolling that forward so that that capacity is not lost.

19 Again, as the organization that
20 represents the state's forest products industry and
21 timberland owners, this -- we see this thermal -- the
22 thermal carve-out is a fantastic opportunity to add
23 diversity to the state's wood-using industries and
24 renewable energy industry as well. And, again, I thank
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1 you for the opportunity to comment on this, and I'll be
 2 happy to try to answer any questions.

3 CMSR. HARRINGTON: Commissioner Scott.
 4 CMSR. SCOTT: Good morning, Mr. Stock.
 5 I just wanted to make sure I understood your position.
 6 So, is your position that we should not delay the
 7 percentage or we should delay?

8 MR. STOCK: Oh, yeah. My preference
 9 would be not to. But, again, recognizing that, you know,
 10 that the technical hurdles that need to be overcome, we
 11 certainly can live with the delay, if that is, in fact,
 12 the case, take the two-tenths. But, obviously, we'd love
 13 to see the program up and running yesterday. But, again,
 14 given the situation that we're faced, we understand that
 15 the realities are what they are.

16 CMSR. SCOTT: Thank you.
 17 CMSR. HARRINGTON: No comments? Okay.
 18 And, the OCA's Office?
 19 MR. ECKBERG: No comment.
 20 CMSR. HARRINGTON: Mr. Patch?
 21 MR. PATCH: Doug Patch, from Orr & Reno,
 22 on behalf of RESA. We appreciate the opportunity to
 23 submit written comments. And, therefore, don't have any
 24 oral comments we want to offer on either issue this
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1 thermal RECs, into the rules.

2 Staff issued a preliminary draft of the
 3 rules on December 21st of 2012 and announced a second
 4 stakeholder meeting for January, and which was held on
 5 January 25th of 2013. So, there have been quite a great
 6 deal of outreach and integration of suggestions into the
 7 Staff's work product over the last several months.

8 After the stakeholder meeting, the
 9 Commission realized that the implementation of Class I
 10 thermal REC obligations should possibly be delayed for the
 11 following reasons: At the stakeholder meeting in January,
 12 many technical issues were raised concerning the
 13 preliminary draft rules. The Staff will need to hire a
 14 consultant to finalize the technical details of the rules,
 15 which are quite substantial. The rules will not be final
 16 until, at the earliest, October 2013. There is a concern
 17 that there might be a matter of administrative fairness,
 18 efficiency and transparency in implementing a REC
 19 requirement that does not have active final rules in
 20 place.

21 Without rules, thermal facilities cannot
 22 submit applications for RECs and become eligible for
 23 creating RECs, which has a chilling effect, as you might
 24 imagine, on the market. And, then, electricity providers
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1 morning. Thank you.

2 CMSR. HARRINGTON: Thank you. Staff?
 3 MR. SPEIDEL: Good morning,
 4 Commissioners. I'm Alexander Speidel. And, I'm here on
 5 behalf of the Staff of the Public Utilities Commission.
 6 And, I have with me Liz Nixon and Jack Ruderman of the
 7 Sustainable Energy Division.

8 Staff believes that the requested delay
 9 in the implementation of Class I thermal RECs is advisable
 10 for reasons of administrative effectiveness and fairness
 11 given the current circumstances. In general terms, the
 12 Staff has been actively involved in the development of
 13 these rules for quite some time and has reached out to
 14 stakeholder entities since at least last summer, the
 15 Summer of 2012. For instance, Liz Nixon began at the
 16 Commission in mid August as a new analyst in this area.
 17 And, on August the 3rd of 2012, the Commission held a
 18 stakeholder meeting and requested input on the present
 19 rulemaking.

20 For several months, Staff researched
 21 metering and verification of thermal RECs and received
 22 input from various entities. Staff drafted rule language
 23 related to the useful thermal energy provisions and also
 24 incorporated the other changes of SB 218, not related to
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1 would have to pay the ACP for 2013, since no RECs would be
 2 available in this subclass of Class I. The ACP impact is
 3 estimated to be about \$550,000 for 2013, which is
 4 substantial in a state of our size.

5 The Staff does not intend to stop the
 6 rulemaking process through the implementation of this
 7 administrative delay. Instead, it intends to be able to
 8 finalize and enhance the rulemaking process on an ongoing
 9 basis and protect utilities against unforeseen
 10 consequences of having no rules in place with a concurrent
 11 REC requirement.

12 Moreover, in response to the argument
 13 raised by Mr. Fossum, on behalf of PSNH, Staff does not
 14 agree that there is necessarily a prohibition under the
 15 terms of the statute for the imposition of a stay in the
 16 incremental increase represented by thermal Class I. The
 17 language of the statute, and I believe the legislative
 18 intent of this statute, was to provide for a method by
 19 which the Commission could delay up to one year "any given
 20 year's incremental increase in Class I Renewable Portfolio
 21 Standards", meaning any subset of the incremental increase
 22 in the standards. In particular, this is a novel subset.
 23 It would be within the ambit of the legislative intent to
 24 have this suspended for a period of time to enable rules
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1 to be in place for the implementation of the program.
 2 And, it does not necessarily imply that the entire class
 3 must be in abeyance for a given year, or that is for a
 4 given year's scheduled increase, a subset of such an
 5 increase could be put in abeyance at the discretion of the
 6 Commission.

7 So, Staff thanks the Commission for its
 8 consideration and for the stakeholders for their
 9 appearance today. Thank you.

10 CMSR. HARRINGTON: Commissioner Scott.

11 CMSR. SCOTT: Thank you, Attorney
 12 Speidel. Do you have thoughts or does Staff have thoughts
 13 on the issue that Mr. Niebling raised, as far as, assuming
 14 that the delay in this subset were to happen, how do you
 15 catch up, if you will, for the following year?

16 MR. SPEIDEL: Commissioner, that's an
 17 interesting question. It might require additional
 18 analysis to a certain extent. I think that's the safest
 19 course of action. I think, in discussion with the
 20 regulated utilities and affected entities, that would be
 21 advisable to develop a solution. I don't think the
 22 Staff's intent is to completely abandon the 2013
 23 implementation. I think it's -- the rulemaking would
 24 allow for a smooth streamlining and implementation of
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1 guess the easiest way, if someone has a comment on a
 2 comment, this is the -- is there anyone? Oh. Let's start
 3 over here then with --

4 MR. WARSHAW: John Warsaw, Liberty
 5 Utilities. Liberty Utilities would not support
 6 incrementally adding the 2013 thermal obligation to 2014
 7 or 2015. Instead, we would see the -- use the intent that
 8 was proposed, to have it as a slowly ramping up
 9 obligation. And, if we increase it too much in the
 10 front-end, before we've had a chance for suppliers and
 11 developers to invest and find facilities and places where
 12 they can invest in these Class I resources, we could end
 13 up with, again, a shortage of RECs and possible, you know,
 14 ACP payments for no other reason than it just takes a
 15 while for facilities to get going.

16 So, we would not support the incremental
 17 increase of 2013 into 2014 and '15, but just keep the ramp
 18 rate as specified in the legislation, just everything slid
 19 out a year.

20 CMSR. HARRINGTON: Okay. Thank you. A
 21 question? Commissioner Scott.

22 CMSR. SCOTT: Mr. Warsaw, could you
 23 help me a little bit then. So, I'm reading that statute
 24 where, again, it says "the Commission may accelerate or
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1 this, of this increase, without disruption. But the
 2 question is "how to do it?" And, I think that would
 3 require additional technical analysis.

4 CMSR. SCOTT: Thank you.

5 CMSR. HARRINGTON: Just one other
 6 question. You know, there was, obviously, some, I guess,
 7 maybe slight disagreement on how much the Staff reached
 8 out to industry for technical support on this. But what
 9 is done in that case is done. My question has more to go
 10 with going forward. Do you see the possibility that a
 11 matter -- is a large amount of technical support from the
 12 industry over the next, say, month or two months, would
 13 that make -- would it be, at this point, still practical
 14 to get the rules out in time for the next year or would
 15 you still -- Staff thinks the delay will still be needed?

16 MR. SPEIDEL: I believe the Staff still
 17 believes it's needed, because of the fact that we might
 18 have a good product developed through stakeholder and
 19 industry input at a fairly early stage, and also with the
 20 assistance of the consultant, of course. But the issue
 21 is, there are delays in JLCAR process that are just
 22 inherent, that it takes time for that to be finalized.

23 CMSR. HARRINGTON: Okay. And, I said
 24 I'd give everybody another chance to go around. So, I
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1 delay for up to one year", wouldn't what you suggest be
 2 being more than delay, it sounds like it would be
 3 eliminating? And, I just want to make sure I follow the
 4 legal path where we'd be able to do what you suggest.

5 MR. WARSHAW: I'm not a lawyer. So, the
 6 only thing I can say is, if we're delaying the 2013
 7 increase, I would see that it would be just delaying the
 8 entire increasing of the thermal until it reaches the max
 9 that is specified in the legislation.

10 CMSR. SCOTT: I appreciate that. And,
 11 if the utility is so inclined, perhaps some kind of a
 12 legal analysis showing us how we could do that would be
 13 helpful, if you're so inclined.

14 MR. WARSHAW: I could bring it back to
 15 my staff, to my organization.

16 CMSR. SCOTT: Thank you.

17 CMSR. HARRINGTON: Mr. Niebling.

18 MR. NIEBLING: Thank you, Commissioner.

19 If I remember correctly, with the original House Bill 873,
 20 the Commission undertook what I believe was termed
 21 "emergency rulemaking", in order to produce rules to
 22 implement 362-F by the end of the -- prior to the
 23 effective date of the January 1, 2006 or '07. Bob, help
 24 me out?

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1 MR. OLSON: Seven.
 2 MR. NIEBLING: 2007, when the law went
 3 into effect and the obligation became effective. And,
 4 subsequently, the PUC then pulled back, and they did a
 5 much more thorough job, and they filled in some of the
 6 holes. And, those rules, the final rules, Puc 2500, came
 7 out in the early fall/mid fall of 2007.

8 Is there not authority or a provision to
 9 consider something similar for the addition of the thermal
 10 subclass? Can you issue call them "interim rules" or
 11 "emergency rules" under your existing 541-A authority?
 12 And, then, continue to work on the details around the
 13 edges and issue final amendments to Puc 2500 sometime
 14 later in 2013? I ask the question. I don't know the
 15 answer to that.

16 And, with respect to that two-tenths
 17 that may potentially be at risk here, should you decide to
 18 delay, it seems that there's fundamentally a legislative
 19 intent here to implement a thermal carve-out that ramps at
 20 two-tenths of a percent per year, up to 2.6 percent by
 21 2025, which is when the statute -- the authority to have
 22 an RPS in New Hampshire goes away, at least under current
 23 statute.

24 To, by administrative directive, to
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1 artificially. So, there's a lot of work to be done.
 2 CMSR. HARRINGTON: Okay.
 3 MR. SPEIDEL: Thank you, Commissioners.
 4 CMSR. HARRINGTON: Thank you. Well, in
 5 closing on this session, I guess there's just a couple of
 6 issues I'd like to comment on. There seems to be a few
 7 legal issues here. The one raised by Public Service,
 8 which is whether the delay has to be applied to the
 9 entirety of Class I or if it can be delayed -- applied
 10 only to a subsection of that. So, for those who chose to
 11 comment on that or requested they do so, it would be
 12 helpful to have different opinions on that.

13 The second one, which is also more of a
 14 legal issue, is where the carry-forward provision, I'll
 15 call it, which is people on both sides talk about whether
 16 that was required by the law that this would be delayed
 17 and carried forward, or it could simply not be implemented
 18 next year and then get picked up on the normal ramp-up
 19 schedule for the next year. Again, we'd appreciate
 20 people's comment on that.

21 And, kind of getting back to the meat of
 22 the argument or the meat of the problem here, which, to be
 23 quite honest with, I'm a little more comfortable with
 24 being an engineer than talking about all this legal stuff,
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1 eliminate a portion of that mandate seems to me an
 2 abrogation of legislative intent. And, I think -- I don't
 3 think you can get rid of it. I'm not a lawyer. And, I'm
 4 probably not going to hire one to give you a legal opinion
 5 on this. But I was there every step of the way during the
 6 legislative process, and a lot of thought went into that
 7 carve-out. And, I would hope, respectfully, that the
 8 Commission not eliminate that small, little start-up
 9 provision, and find a way to embed it in subsequent years,
 10 so that the impact on the utilities is modest, so that we
 11 don't lose it altogether. And, I think that's consistent
 12 with legislative intent. Thank you.

13 CMSR. HARRINGTON: Anybody else like to
 14 speak, as sort of rebuttal? Okay.

15 MR. SPEIDEL: Well, as far as emergency
 16 rules go, the Staff believes that certain technical
 17 problems would still remain, in terms of crafting rules
 18 that made technical sense, and doing it in a hasty fashion
 19 wouldn't necessarily solve any problems.

20 The two-tenths, there is a potential for
 21 a solution that would integrate that in some way, and we
 22 don't know yet. It would require a lot of consensus.
 23 Obviously, there is disagreements on how to proceed. But
 24 the discussions must continue, they can't be cut off

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1 but -- and that's the little word "can be metered", the
 2 word "metered" is what's causing the problem here, I
 3 think. People look at this, and we've had -- the
 4 Commissioners have had meetings with the Staff on this,
 5 and this can get very, very complicated very, very
 6 quickly, as to how much of a degree, how far do you want
 7 to go in that little word "can be metered", and to
 8 determine what's "useful thermal energy". There's a lot
 9 of different ways that can be looked at. And, you can,
 10 obviously, you can take some type of metering, and then
 11 use that to do a calculation to come with something else,
 12 how direct the metering has to be. There's a lot of
 13 options there.

14 So, whether we decide to delay the
 15 implementation of this or not, we're going to need the
 16 support of outside technical people on this. The Staff
 17 has limited engineering people. And, as you're aware, we
 18 were specifically prohibited by statute from hiring an
 19 engineer or anybody to help with this thing. So, any type
 20 of support, if somebody has a proposal that they put
 21 together, a written proposal that would work on these, we
 22 would certainly encourage people to send that in. Please
 23 be advised that one that may work for a thermal boiler may
 24 not necessarily work for a geothermal system. So, if you

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1 could be as generic as possible, or even look at what you
2 consider the major things to be placed in here, I don't
3 think, as Commissioner Scott has stated, the intent of the
4 law was for someone to aggregate 500 wood-burning stoves
5 in people's basements and then try to get thermal credits
6 for that. So, --

7 (Loud noise in the room.)

8 CMSR. HARRINGTON: I guess someone
9 didn't like that idea. But maybe that's possible as well.
10 So, if anything people can provide on a technical basis as
11 to actually how to implement this would be truly helpful.

12 Commissioner Scott, did you have
13 anything else you wanted to add?

14 (No verbal response)

15 CMSR. HARRINGTON: Okay. So, now, we'll
16 move onto the second part, which was actually the first
17 one noticed. Which, just so we make sure what we're
18 talking about, this is the purpose for comment whether
19 it's appropriate for the Commission to adjust the Class
20 III renewable portfolio requirements. And, I've given the
21 background on this. This is because, basically, we've had
22 a very large increase in the alternative compliance
23 payments, and we're trying to determine if it is advisable
24 for the Commission to make an adjustment to those going

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1 2012 such that the requirements are equal to an amount
2 between 85 percent and 95 percent of the reasonably
3 expected potential annual output of available eligible
4 sources after taking into account demand from similar
5 programs in other states." Very straightforward and
6 concise. The Legislature has really nailed it down for us
7 again.

8 So, with that, I'll start again with
9 people who might have comments.

10 MR. LABRECQUE: My name is Rick
11 Labrecque, from PSNH. Just throw out that we -- PSNH has
12 got a lot of experience in this market. We're here to
13 help. We think this is a complicated issue that might
14 require some types of technical sessions or something
15 where interested parties can discuss the potential way to
16 implement an adjustment, you know, maybe aside from the
17 question of whether or not it's appropriate, just how
18 would the mechanics be done.

19 I don't believe, at this time, PSNH has
20 a position on the appropriateness of it. But, we, as a
21 participant in the market, I will, you know, just throw
22 out some facts as I see them. Is that it is difficult, if
23 not impossible, to acquire these, either last year or this
24 year. And, that kind of draws upon the statement

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1 forward under --

2 CMSR. SCOTT: 362-F:4, Subsection VI.

3 CMSR. HARRINGTON: As Commissioner Scott
4 just stated. So, we're going to basically do the same
5 thing. We'll go around, give everybody a chance to
6 comment, and then there will be a chance for rebuttal
7 comment on that. Commissioner Scott.

8 CMSR. SCOTT: And, also, for any clarity
9 in our discussions, I'm sure you've all thought of this
10 anyways, but that section of the statute is fairly
11 explicit, as far as allowing the Commission to adjust to a
12 certain percentage, but it's really we have to base that
13 upon supply effectively in the region and demand
14 effectively in the region. So, we would -- the Commission
15 definitely needs some input and help on what are those
16 things and how do we quantify those, should we go down
17 this path. Thank you.

18 CMSR. HARRINGTON: And, maybe as a
19 starting point, we should read that part of the statute,
20 just because it's not exactly straightforward. It says:
21 "After notice and hearing," and, as we stated, this the
22 hearing today, "the Commission may modify the Class III
23 and Class IV renewable portfolio standard requirements
24 under RSA 362-F:3 for calendar years beginning January 1,

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1 regarding the demand from similar programs in other
2 states. There -- I believe all of the eligible Class III
3 resources that have gone through the eligibility, you
4 know, application and approval here at the PUC, are also
5 eligible in Connecticut and/or Massachusetts. And, those
6 markets right now are higher valued than the New Hampshire
7 Class III ACP. So, there's -- obviously, the sellers are
8 selling into Connecticut, for example. So, it does leave,
9 essentially, no RECs available for New Hampshire
10 load-serving entities to meet their obligation. So, last
11 year, as you know, it resulted in a large payment across
12 the board by all the load servers into the Renewable
13 Energy Fund through the ACP mechanism. We anticipate that
14 to happen again, so that that fund could potentially, you
15 know, double by this July. And, whether or not if you
16 call that a "dysfunctional market" or a "market where
17 there's no supply", you know, you could label it as that.

18 Whether that is appropriate to make an
19 adjustment for the demand, because these extreme ACP
20 payments are not appropriate. That's -- I don't think
21 that's something I want to pass a judgment on. But I
22 would say, what is done with the money that's placed into
23 the Renewable Energy Fund is certainly an important factor
24 in coming to a judgment on whether or not it's reasonable

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1 to continue with large, you know, perhaps \$10 million a
 2 year ACP payments. If the Renewable Energy Fund were
 3 being used in a manner consistent with the ideals of the
 4 RPS Program, that's one thing. If the money were somehow
 5 to be siphoned off for something completely unrelated to
 6 the RPS Program, that would, you know, that would probably
 7 be something that PSNH would not be in favor of, as, you
 8 know, just a impact on rates that is being used for let's
 9 just say a non-electrical or a non-renewable type of
 10 application.

11 So, I think that's about all I wanted to
 12 say. But I would suggest that any methodology would
 13 require some technical sessions to discuss.

14 CMSR. HARRINGTON: Did you have a
 15 question, Commissioner Scott? Just one question. You had
 16 mentioned that you thought that the Class III RECs supply
 17 in New Hampshire would be eligible in Connecticut or has
 18 been eligible in Connecticut and Massachusetts. And, I
 19 sort of got the implication that you thought that would be
 20 the case going forward.

21 But, with the new laws in Massachusetts
 22 for this year, I believe there has to be, I'm not actually
 23 sure what the word means, but that they use the term
 24 "sustainable" forestry has to be associated with the
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1 Utilities. We appreciate being able to comment here. As
 2 you know, load-serving entities in New Hampshire were
 3 unable to purchase sufficient Class III RECs to satisfy
 4 their requirements for 2011, and we expect that that will
 5 be the case for 2012, and possibly going forward. And,
 6 why is that? Well, of the 19 REC -- 19 units that have
 7 been approved as Class III RECs in New Hampshire, all of
 8 them are able to also -- were also approved as Class I
 9 RECs in Connecticut, ten are Mass. Class I RECs, and four
 10 are Rhode Island new renewable resources. And, those
 11 markets all played in -- you know, sell RECs in the mid
 12 50s to mid 60s price range, mixed with the cap in New
 13 Hampshire of \$31 or so in 2012 and \$31.50 in 2013, it just
 14 goes -- just ends up having the owners of those resources
 15 making rational decisions and selling their RECs in the
 16 markets where they can make the most money that they can.
 17 And, I can't fault the owners of those resources for doing
 18 that. The trouble is, you end up in New Hampshire with
 19 significant ACP payments to the state, because those
 20 resources -- those RECs are not available to satisfy New
 21 Hampshire's requirements.

22 Some of the recommendations that we
 23 have, which would probably need more study, might be to
 24 harmonize New Hampshire's definition of "new" versus "old"
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1 burning of that. And, I heard from numerous people that
 2 some of ours may be able to qualify, some may not, that
 3 applies to not only generating facilities in New
 4 Hampshire, but in the other New England states. So, are
 5 you saying that you believe all of them will continue to
 6 qualify in Massachusetts as we go forward?

7 MR. LABRECQUE: Well, landfill gas has a
 8 big role to play here as well. And, I don't follow
 9 Massachusetts that closely. I don't know if there's any
 10 changes in the eligibility regarding an existing older
 11 vintage landfill gas. But --

12 CMSR. HARRINGTON: Excuse me. It just
 13 applies to the biomass plants.

14 MR. LABRECQUE: Okay. All right. So,
 15 most of the units, really, in this class are landfill gas,
 16 at least as of the last time I downloaded the list of
 17 facilities from the PUC website. And, most of them that
 18 are qualified in Mass. are also qualified in Connecticut.
 19 So, even if some subset were to lose eligibility for
 20 Massachusetts, they then have Connecticut as their backup,
 21 before New Hampshire as their next backup.

22 CMSR. HARRINGTON: Okay. All right.
 23 Thank you. Okay. Just going again around.

24 MR. WARSHAW: John Warshaw, Liberty
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1 resources, to roll it back from 2006 to 1997, and that
 2 would then make New Hampshire's RECs very similar to the
 3 other markets. The other recommendation might be rolling
 4 the Class III requirement down a couple of percentage
 5 points, until the market is able to catch up with the
 6 demand.

7 What we do not support, and I know I
 8 have heard some folks have suggested this, is raising the
 9 ACP payment for Class III RECs to a higher level than it
 10 is now. The only thing that that would do would be to
 11 increase the cost to our customers. And, at this time, we
 12 don't recommend increasing any costs to customers.

13 And, that's the end of what I have to
 14 say.

15 CMSR. HARRINGTON: Commissioner Scott.

16 CMSR. SCOTT: Thank you for your
 17 comments. I do want to remind you what venue you are in.
 18 So, many of the things you're talking about, you'd need to
 19 be at the Legislature, not at the Commission.

20 Having said that, what is before for
 21 topic here is should we adjust the percentage, and, if so,
 22 there's probably an easier said than done formula here in
 23 the statute, which is we need to base it on what the
 24 demand is and what the supply is in the region. So, would
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1 you be able to have -- do you have thoughts on that, how
2 we would actually do that? How would we implement that
3 change? It sounds like, if I'm correct, that you're
4 supportive of a change, correct?

5 MR. WARSHAW: Yes. I am supportive of a
6 change. Exactly how that would happen or what information
7 we would need to make that decision, I have not gone much
8 further than saying "yes, it needs further analysis."

9 And, like PSNH, I think that would require some working
10 together with other folks to investigate that and to come
11 up with a program that would be supportive and
12 documentative.

13 CMSR. SCOTT: Thank you.

14 CMSR. HARRINGTON: And, just one
15 follow-up question, I just want to make sure I heard. You
16 said that the RECs in other states were trading in the 50
17 to -- I didn't get the rest of it, 50 to 55, I wasn't
18 sure --

19 MR. WARSHAW: Yes. Connecticut Class 1
20 RECs are trading in the mid \$50 range; the Mass. Class 1
21 RECs are trading in the mid \$60 range; and the New
22 Hampshire -- and the Rhode Island new RECs are trading in
23 the mid 60s range.

24 CMSR. HARRINGTON: And, the issue here
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1 However, no matter how many bushes I
2 beat, and how many brokers I call, how many resources I
3 call, there simply are not Class IIIs available. So, just
4 in the pure language of this piece of the RSA that you
5 read, if we're talking about "85 to 95 percent of
6 available", and "available" is the word I key into there,
7 I think the number of "available" is zero, and 85 to 95
8 percent of zero is still zero. It's unfortunate, but it's
9 the nature of a regional market with various definitions.

10 Also, I echo what Mr. Warshaw says, that
11 we should not just simply increase the ACP in New
12 Hampshire in order to try and make it line up with the
13 Class Is in Connecticut and Rhode Island, as that will
14 just increase costs to ratepayers. That paying the ACP
15 already is producing that result of increasing costs to
16 ratepayers, versus being able to buy RECs for something
17 less than the ACP. I would hope we don't exacerbate that
18 problem.

19 CMSR. HARRINGTON: Thank you. Anybody
20 else on this left side? Okay. So, back to --

21 MR. OLSON: Commissioner, both Mr. Stock
22 and I have some comments. But Mr. Veilleux has a need to
23 depart shortly. So, if he could go first, and then we'll
24 pick up afterwards.

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1 is that the Class III RECs in New Hampshire all qualify
2 for those Class I in the other states?

3 MR. WARSHAW: Correct. But the maximum
4 that they would basically be sold to load-serving entities
5 would be the ACP price, which is only 31.39 in 2012.

6 CMSR. HARRINGTON: So, as long as that
7 disparity exists, what you're saying, to make sure I got
8 this straight, that any company thinking correctly or at
9 least economically is going to say "I will pay an ACP of
10 31 whatever, rather than buy a REC for 50 something"?

11 MR. WARSHAW: Right.

12 CMSR. HARRINGTON: Okay. Thank you.
13 Miss? Ma'am?

14 MS. MANYPENNY: I'm Heather Manypenny,
15 from New Hampshire Electric Cooperative.

16 CMSR. HARRINGTON: I'm sorry, from what
17 one?

18 MS. MANYPENNY: New Hampshire Electric
19 Cooperative.

20 CMSR. HARRINGTON: Oh, I'm sorry.

21 MS. MANYPENNY: We actually did not pay
22 the ACP in 2011 for Class IIIs, basically because we had a
23 contract that predated the REC price in Connecticut for
24 Class I.

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1 CMSR. HARRINGTON: Certainly. Mr.
2 Veilleux.

3 MR. VEILLEUX: Thank you. Thank you.
4 For the record, my name is Henry Veilleux,
5 V-e-i-l-l-e-u-x. And, I'm with the Sheehan Phinney
6 Capitol Group, in Concord, and here this morning on behalf
7 of Waste Management and Wheelabrator. And, we fully
8 recognize why the Commission has opened this docket with
9 the ACP payments going up substantially.

10 We would suggest, however, that the
11 Commission postpone any action on this issue, or at least
12 delay it. There is Senate Bill 148 that has been
13 introduced in the New Hampshire Legislature, and will be
14 coming up for a hearing sometime soon, but it is going to
15 address this issue. The allocation of requirements for
16 Class III are part of this legislation. And, additionally
17 Senator Pierce is going to be presenting an amendment to
18 look at adding waste-to-energy facilities to Class IIIs,
19 that would be the incinerators, to Class III. It would be
20 a 6-megawatt cap. And, then, additionally, there will be
21 a look at the methane requirements and possibly putting a
22 cap on that.

23 So, there's going to be activity in the
24 Legislature on this issue coming up very soon. And, we

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1 would respectfully suggest that maybe the Commission Staff
2 participate as stakeholders over at the Legislature, which
3 a number of other stakeholders will be participating in
4 the discussion on that legislation. There are a number of
5 Senate co-sponsors and House co-sponsors.

6 So, we would just suggest that, we fully
7 recognize why the Commission opened this docket,
8 obviously, but acting soon on this issue may be premature,
9 if, in fact, the Legislature, in June, enacts a statute
10 that may not be consistent with what the Commission may do
11 in this docket. So, we would just raise, you know, that
12 concern.

13 CMSR. HARRINGTON: Thank you.

14 Mr. Olson. Oh, I'm sorry. Do you have a question
15 Commissioner Scott?

16 CMSR. SCOTT: Thank you, Mr. Veilleux.

17 So, I'm just trying to get my head around timing. That,
18 presuming that the Legislature were to act in a fashion
19 that's consistent with what we're talking about, which is,
20 obviously, an assumption, that would -- I'm just trying to
21 think through the timing for regulated entities. And, so,
22 we're talking a calendar year for compliance obligations.
23 So, if we were to, if I understood you right, basically to
24 hold them in abeyance or just basically wait for the

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1 that would take to iron out? And, the concern, I don't
2 want to set regulated utilities, you know, load-serving
3 entities up with something they can't do, obviously. So,
4 I want to be fair with them. So, I was just curious how
5 long you thought that process may take to iron that out?

6 MR. VEILLEUX: I'd defer to Mr. Olson, I
7 think he could probably answer that a little better.

8 CMSR. SCOTT: Okay. Then, I'll wait and
9 -- I'll be anticipating that response. So, thank you.

10 CMSR. HARRINGTON: Let's go right to
11 Mr. Olson then.

12 MR. OLSON: Thank you, Commissioners. I
13 understand there will be an opportunity for written
14 comments, so I'm not going to get as involved in my
15 comments this morning, and will submit some written
16 comments for some of the more detailed parts of the things
17 I might say. So, I appreciate that opportunity.

18 CMSR. HARRINGTON: Excuse me.

19 CMSR. SCOTT: Mr. Olson, just to
20 interrupt. So, just who are you representing?

21 MR. OLSON: Oh, I'm sorry. I filed an
22 intervention petition, and I represent the six independent
23 wood-fired power plants. And, that would be the
24 Whitefield Power & Light Company; Springfield --

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1 Legislature to see what happens, and then we take this
2 issue up? Is that your thought?

3 MR. VEILLEUX: Yes. And, one of the
4 pieces in the legislation, I believe, takes a look at the
5 2012 payments that would be made into the fund, and I
6 think it suggests rebating that to customers. So, I
7 understand your concern, that waiting may, you know, allow
8 the market to do something in 2012, we won't be able to
9 have any impact on it, but the legislation does address
10 that issue. So, again, I don't think there's a need for
11 the Commission to act right away on this issue, because
12 the Legislature I think is going to have a -- could
13 potentially, you know, have a say on that. Obviously, it
14 would have to be, if it's going to be enacted, it would
15 have to be enacted sometime late May/early June. So, we
16 may have a sense by then, when, you know, when the
17 Legislature would have a say on this.

18 CMSR. SCOTT: Okay. Thank you. And,
19 again, this question may be best for perhaps the person
20 sitting next to you or somebody else here. But,
21 obviously, it's already been intoned that trying to figure
22 out this "85 to 95 percent", based on demand and supply,
23 is probably not as easy as may have occurred to the
24 Legislature when they wrote this. How long do you think

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1 (Court reporter interruption.)

2 MR. OLSON: Okay? All right. So, they
3 are Whitefield Power & Light Company; Springfield Power
4 Company; Indeck-Alexandria; Pinetree Power, Inc.; Pinetree
5 Power-Tamworth, Inc.; and Bridgewater Power Company, LP.
6 That should be six.

7 At the outset, I'd like to cover, just
8 in summary form, what I think my main points are, and then
9 to pick up on some of the things that Rick Labrecque of
10 PSNH and John Warshaw of Liberty mentioned, because I
11 think there's some confusion here about the nature of the
12 market and who -- what entities play in what markets, and
13 I'd like to sort that out. Because when we come to
14 figuring out what the Class III purchase percentage is,
15 it's important to understand what markets are available to
16 what types of facilities. And, I think the two prior
17 speakers spoke correctly, if it is a very general
18 statement. But, when you come to specifics, there are
19 some nuances that need to be recognized.

20 So, the first couple of main points,
21 just in summary form, is I agree with Mr. Veilleux, with
22 respect to requesting that you consider a delay in the
23 docket while Senate Bill 148 is making its way through the
24 process. I think your Staff, which it has done in past

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1 bills pertaining to RPS, and certainly other legislation,
 2 work with the stakeholder group in a collaborative
 3 fashion, much like you might end up having done here in
 4 the docket anyway, but do it in the legislative process,
 5 because that bill is looking at some of the purchase
 6 percentage years and making downward adjustments in them.
 7 And, so, I think that there's a way to get to I think
 8 where the Commission would like to go, recognizing its
 9 duty under RSA 362-F:4, VI, and what's happening in Senate
 10 Bill 148. So, I think we could work collaboratively on
 11 that. So, that's one point.

12 The second point is, that when you look
 13 at Senate Bill 148, it's proposing adjustments in the
 14 years 2013 and 2014 only. And, I want to explain why
 15 those are the years. Mr. Veilleux is correct, in 2012, it
 16 considers 2012 to be a year where the transactions are
 17 closed. That is, the sales and the ACP payments will have
 18 been made by the time the Legislature concludes its
 19 activity. And, so, it looks at the year 2012 and says,
 20 "well, to the extent that monies have been paid into that
 21 fund above a certain number, we ought to find a way to
 22 rebate them to ratepayers, because we recognize that we
 23 could have not act in a timely fashion to adjust a 2012
 24 percentage." So, it corrects it by setting up a mechanism
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1 "Class III" category. So, only two of them are presently
 2 qualified by the Commission as "Class III". There was a
 3 third, but it had difficulty with the particulate matter
 4 standard, and it's presently making a capital investment
 5 to correct that.

6 But, at least right now, of the 122, 40
 7 are biomass. So, the real issue for scarcity in Class III
 8 right now is "where does all this methane go? Because
 9 people have qualifying methane generators, but, obviously,
 10 they go to other jurisdictions. And, that's where, you
 11 know, the issue of the other jurisdictions become
 12 significant. And, that's the disparity that I think the
 13 prior speakers referenced in the alternative compliance
 14 price.

15 And, here's where I want to clarify
 16 something I think Mr. Warshaw said. He referred to "RECs
 17 trading in \$50, \$55, and \$60 ranges." I want to clarify
 18 that there's a difference between where RECs trade and
 19 what ACP prices are. ACP prices are the ceiling price,
 20 obviously, that the provider of electricity under the
 21 statute pays, if it has come up short in the number of
 22 RECs it buys. When it buys RECs, it never pays the ACP
 23 price, because it would just pay into the fund at that
 24 level. So, it becomes a ceiling price, and REC prices are
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1 to return monies, which is, in effect, a way of correcting
 2 the percentage after the fact. So, it corrects the
 3 percentages or it adjusts them, rather, in 2013 and 2014.
 4 And, the Legislature's proposed -- the proposal before the
 5 Legislature is to reduce them from six and a half percent
 6 in 2013, to five and a half percent in 2013, and from
 7 7 percent in 2014, to five and a half percent in 2014.
 8 So, they make a downward adjustment. And, so, -- and, I
 9 can elaborate on that in a moment, and certainly in my
 10 written comments.

11 The third main point is, and I think
 12 both of the utilities speaking before me made this point,
 13 that is the bulk of the resource right now, when you look
 14 at the report of eligible facilities that the Commission
 15 maintains on its website, and the most recent one I
 16 believe is the October 8th, 2012 report. I know there
 17 have been some additions since then. But it lists about
 18 122 megawatts of Class III facilities. Of that 122, I
 19 think roughly 40 megawatts are what are known as "Class
 20 III biomass", that is my clients. Because Class III is
 21 limited to biomass, it's -- I think it's 25 megawatts or
 22 less. So, it's a discrete set that you can identify
 23 looking around New England. And, of the six facilities I
 24 represent, you'll see that two much of them are in that
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1 below that.

2 So, when you look around the programs
 3 right now, Massachusetts, and I don't remember the exact
 4 number, but its ACP is probably in the neighborhood of \$62
 5 for Class I. Okay? And, in Massachusetts, "Class I"
 6 means "new facilities". So, none of the existing New
 7 Hampshire biomass facilities, to my knowledge, are Class
 8 I. One might have tried, one may be in their as
 9 incremental. But the bulk of them I don't believe qualify
 10 in Class I. And, even the one that's in there as
 11 incremental, under these new Massachusetts rules, which I
 12 want to make reference to in a moment, would not remain
 13 there, even if it is there.

14 Massachusetts did, a few years ago,
 15 implement a Class II program. It would allow what I call
 16 "existing biomass" to qualify. But it set its ACP at a
 17 level so low, and set its purchase percentage at a level
 18 so low, and set its environmental emission standards equal
 19 to those that are required of new facilities, that the
 20 result is they got zero subscription into that program.
 21 So, it's a class that exists, but never got any
 22 subscription, and, basically, from a business standpoint,
 23 it really doesn't exist. And, in fact, Massachusetts has
 24 now suspended participation or suspended issuing what it
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1 calls "statement of qualifications" into that class.

2 So, really, for the purposes of Class
3 III New Hampshire, the Class III facilities don't really
4 fit into New Hampshire, the Massachusetts Class I, if they
5 are biomass. If they are methane, they can move into
6 Class I, I assume.

7 With respect to Connecticut, the
8 Connecticut Class I program only has an emission standard
9 for oxides and nitrogen. And, it has the same standard
10 that New Hampshire has, 0.075 pounds per MMBtu. The
11 result is that, if you are a New Hampshire Class III
12 eligible biomass facility, you would be meeting that NOx
13 standard. And, you would also be capable of meeting the
14 Connecticut standard. The New Hampshire Class III also
15 has a particulate matter standard, but Connecticut Class I
16 does not. So, the result is, all biomass facilities in
17 New Hampshire qualify in Connecticut Class I. Not all New
18 Hampshire biomass facilities are qualified in New
19 Hampshire Class III, that's where you get the 40 megawatts
20 out of 122 megawatts.

21 The New Hampshire ACP is in the \$31
22 range; the Connecticut Class I ACP is set by statute at
23 \$55. And, obviously, RECs in Connecticut trade below
24 that. So, they don't trade at 55, but the market is made
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1 even further below the numbers in 148 is a valid
2 discussion, because we don't know where that methane,
3 which comprises the bulk of that, will go in '13 and '14.

4 What we come to when we come to 2015, we
5 come to a lot of uncertainty in the market. And, this is
6 where I made earlier mention of "Massachusetts Class I".
7 And, I think, Commissioner Harrington, you made reference
8 to some rule changes. And, what's happening in
9 Massachusetts Class I is their regulatory agency, the
10 Department of Energy Resources, or the DOER, has
11 promulgated final rules last year that impose, for biomass
12 facilities, a fuel-harvesting standard and a boiler
13 efficiency standard. And, the main biomass facility, in
14 Class I Massachusetts, is Schiller Station, at some
15 50 megawatts of nameplate capacity for biomass. Whether
16 that facility can remain there, in 2015 and 2016, you
17 know, that's something we could look to PSNH to answer. I
18 can speculate that, in 2015, it will have to deal with
19 fuel-harvesting standards, and that may affect some level
20 of its REC sales into Mass., but PSNH would know that much
21 better than I.

22 I know that, in 2016, there's a boiler
23 efficiency standard that kicks in that, at least from my,
24 and I stress this greatly, given my audience, my
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1 below that, depending upon supply and demand.

2 So, that's the situation where, as the
3 prior speakers have said, if you are making a business
4 determination, you will go to the place where your REC has
5 the highest value. And, right now, for a biomass, an
6 existing biomass plant, that would be the Connecticut
7 market.

8 So, why do I say "adjust 2013 and 2014"?
9 That's because those are the years that we can see,
10 putting the word "see" in quotes, we can "see" that, in
11 2012, as the prior speakers indicated, there's not an
12 expectation that they can procure RECs; Senate Bill 148
13 addresses that.

14 We also know that, from the biomass
15 standpoint, that it is unlikely they will sell into the
16 New Hampshire market in Class III, given that, one,
17 there's only 40 megawatts of them. And, secondly, that
18 the ACP differential in 2013 and 2014 remains. And, so,
19 the business expectation is you would sell into that
20 Connecticut market. So, with that expectation, we support
21 the downward adjustment that you see in Senate Bill 148.
22 We don't suggest adjusting years beyond 2013 and 2014,
23 because there are a lot of unknowns in the marketplace.
24 And, whether the 2013 and 2014 numbers could be adjusted
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1 non-engineering background suggests that they can't meet
2 that boiler efficiency standard in 2016, and therefore
3 would be out of that program, and their markets would be
4 Rhode Island, which is a small market, or Connecticut
5 Class I, or New Hampshire Class I, because that's where
6 they would fit statutorily.

7 So, there's a lot of other events
8 occurring in 2015 that can affect supply and demand in the
9 common markets between Class I in Mass. and Class I in
10 Connecticut and Class I in New Hampshire, and, ultimately,
11 that can affect the supply and demand into Class III in
12 New Hampshire, because, if you're in Class I in
13 Connecticut, you may move into Class III New Hampshire.
14 But none of those pieces have sort of landed on the
15 chessboard at this point. And, so, it's hard to see how a
16 rational adjustment could be made in 2015, at least from
17 my vantage point.

18 '13 and '14, you know, my view is, we do
19 not see through a glass darkly, we have a much clearer
20 picture of what we could expect in '13 and '14, and,
21 hence, adjustments can be made there.

22 And, again, I can, you know, put this
23 down in a written comment, but let me stop there.

24 CMSR. HARRINGTON: Commissioner Scott.
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1 CMSR. SCOTT: Thank you, Mr. Olson. So,
2 starting with the original comment that you agreed with
3 Mr. Veilleux that we should hold this in abeyance, if I
4 can paraphrase, while the Legislature acts. Let me ask
5 the converse of that. What would be the harm, if we
6 continued this process and adjusted, clearly, we'd be
7 adjusting based on what current law is, not what, you
8 know, at the time we issued an order. What would be the
9 harm in that?

10 MR. OLSON: I don't think of it so much
11 in terms of "harm", as in terms of comity with the
12 legislative process. You're making adjustments in '13 and
13 '14, presumably, that the Legislature is also making. So,
14 you're expending your resources, and the Legislature is
15 expending their resources. And, it would seem to me you
16 don't want to end up with different results. And, so, I'm
17 just looking for a way to bring the processes together, so
18 that the result is a uniform one. And, it seemed to me
19 that, if your Staff participated in what we
20 euphemistically refer to as "stakeholder processes" over
21 at the legislative process, we could have that
22 collaborative discussion and work out a set of numbers.
23 So, the Commission itself would not be uninvolved, it
24 would be very much involved in the process. We'd just be
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1 facilities will turn and say "I have a REC that can be
2 sold to Connecticut, and I will sell it directly into the
3 Connecticut market." And, it's turned in and stamped
4 "done" in Connecticut, and, so, that REC is no longer
5 tradeable. Other RECs are sold to brokers or other RECs
6 are sold to buyers who operate in many jurisdictions, and
7 will later decide, at the time of compliance, where
8 they're going to use that REC. So, if you have a
9 competitive seller who operates in Massachusetts, New
10 Hampshire, and Connecticut, and they buy a REC from a
11 Class III New Hampshire facility, but they also have a
12 compliance obligation in Connecticut, well, they bought a
13 Class III REC, but they may use it in Connecticut. Or, if
14 it was a Class I Connecticut REC that they bought, they
15 may use it in Massachusetts and use the Class III to cover
16 Connecticut. So, it's very difficult to figure out where
17 it all goes, because there's no -- there's no central
18 clearing house where one can see that.

19 So, I think there are, you know, there
20 are questions of, you know, how do you figure out what's
21 going on in other states? How do you look at the bulk of
22 the methane facilities, who apparently, I didn't hear
23 anyone identify themselves, but I don't hear anyone here
24 today from any one of the methane generators, and they
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1 using Senate Bill 148 as the vehicle.

2 If 148 somehow stumbled and failed, you
3 would still have all of that work that you could then come
4 back, pick up your docket and use it. So, I am not
5 suggesting the work stops, so much as we look at -- we
6 change the vehicle by which we achieve the result.

7 CMSR. SCOTT: All right. Thank you for
8 that. And, let's say for a moment we didn't wait for the
9 Legislature and we were to press on with the current
10 docket. Do you have thoughts on how we would arrive at 85
11 to 95 percent of available demand, take into account --
12 the supply, rather, take into account the demand in the
13 region?

14 MR. OLSON: That's something that would
15 require a lot of thought, which I have not given it. I do
16 want to say to you that my view is, that's very difficult
17 statutory language. Because, as the representative from
18 the Co-op pointed out, you could conclude that it means
19 "zero", because, if you focus on the word "available", you
20 know, that's the Co-op's position, apparently.

21 How one looks at the demand in other
22 states, and figures out where RECs are going and where
23 they will go over time, is not as easy as it sounds.
24 Because, when you look at how RECs are sold, some

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1 comprise the bulk of the eligible facilities in Class III.
2 So, you know, if you're a New York methane generator, and
3 you're qualified in this state, you know, part of the
4 difficulty under the statute is, well, even if you had a
5 long-term contract in New York, and you sold your methane
6 RECs to that buyer, if that buyer looks out and says
7 "well, gee, that REC also helps me in Connecticut." And,
8 they use it in Connecticut, it's not going to come to New
9 Hampshire.

10 So, it's a long way of saying "it's a
11 complicated subject, and I don't know the answer to that."
12 And, the statute gives you a very narrow window, putting
13 aside its ambiguities, of saying "you've got to be in an
14 85 to 95 percent range", and putting aside the argument
15 that it means zero if something is not available, it still
16 leaves you in a position where you're setting the supply
17 and demand such that demand is below supply. And, you
18 know, if a \$31 ACP is allowing RECs to flow to
19 Connecticut, and, by adjusting the purchase percentage,
20 you can only set it so that it creates downward pressure
21 on the Class III RECs, it seems that you end up pushing
22 more RECs into Connecticut the further out in time you go.
23 So, it's not a simple process, and I don't -- I'm not a
24 fan of that provision in the statute. Because I don't

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1 think -- I don't think it gives you something that's very
2 workable, as opposed to just saying "well, go out and
3 figure out what the market looks like and adjust RECs so
4 that you have a workable market, given the REC supply."
5 It doesn't tell you to produce a workable market
6 necessarily.

7 CMSR. SCOTT: Well, on that front, the
8 statute does seem to give us a little bit of a wiggle
9 room, in that the 85 to 95 percent, they use the word of
10 what would be the "reasonably expected potential". So
11 that, to me, gives some leeway.

12 MR. OLSON: Sure.

13 CMSR. SCOTT: So, given that, and all
14 the complexities, I understand it's not a simple solution
15 here, but would not a solution be to have a ledger sheet,
16 where we know all the eligible generators, and where they
17 could potentially sell to, based on the different statutes
18 for the RPSs in the different states on one side, and then
19 we know the compliance obligations for generators --
20 excuse me "generators", compliance entities in the states,
21 and to take those two, and that's our delta, and then we
22 take 85 to 95 percent of that. I understand we don't know
23 where they're going to be sold to, but, to me, the word
24 "reasonable" gives us, as long as we make reasonable
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1 suggesting we look at '13 and '14, but not beyond,
2 correct?

3 MR. OLSON: Correct.

4 CMSR. SCOTT: Thank you.

5 CMSR. HARRINGTON: And, Mr. Olson, I
6 just have a very limited amount of questions. One thing I
7 was trying to follow, you basically talked a lot about the
8 vagaries of the market, once you get beyond 2014. And,
9 you know, looking at that, I think we can look at the
10 biomass side and have a pretty good idea of what the
11 production is of an existing plant, and with known
12 capacity factors. So, is it the methane production that
13 becomes sort of fuzzy at that time? I'm not familiar with
14 that technology. Since these -- so, that's a "yes" you're
15 saying. You have to speak up, so Steve can write that
16 down.

17 MR. OLSON: Okay. I think, from my
18 vantage point, the methane production, in terms of where
19 it goes, is fuzzy right now, and it doesn't get clarified
20 for me out in 2015. And, the reason is, I don't really
21 follow that type of generation. It's baseload generation,
22 like any other natural gas type generation. So, I think
23 of it as, you know, in the neighborhood of a 90 percent
24 plant factor. But how much of it is out there at any time
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1 assumptions, that works. Is that your correct -- is that
2 your vision of that?

3 MR. OLSON: I'd have to think about the
4 methodology you just laid out. But I agree with you that,
5 you know, "reasonable" gives you the ability to make, you
6 know, a range of assumptions that fall within the ambit of
7 "reasonable". But, the methodology, I would have to think
8 about it. I think a lot of it gets -- it becomes less
9 significant, to my particular client group, if I -- say
10 we're looking at the years 2013 and 2014, because there I
11 have a good handle on, I think, what the business signals
12 are, and, so, I know what will happen in those years. So,
13 the adjustments in those years become less troubling.

14 When we get to a year like 2015, because
15 there are so many variables in the marketplace, you know,
16 it becomes much more problematic for me, if we were to
17 implement the statute.

18 So, my recommendation is, if we focus on
19 '13 and '14, I'm okay with that in developing a process,
20 subject to my earlier comment about working on Senate Bill
21 148 to achieve that result.

22 CMSR. SCOTT: Okay. Thank you. And,
23 just to clarify. So, rather than just, if we were to go
24 down this path, rather than to just look at '13, you're
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1 and how much of it would come into a particular market, I
2 don't have a good view of. With --

3 CMSR. HARRINGTON: So -- excuse me, go
4 ahead.

5 MR. OLSON: With respect to my statement
6 about biomass, I think there's a lot of potential changes
7 in the marketplace in the 2015 and beyond period. That,
8 you know, the closer we get, maybe get clarified, I
9 mentioned one, which is Schiller biomass. And, we know,
10 we can look historically at Schiller and say, well, here's
11 how many RECs it produces, whether it's 380,000, 400,000,
12 we can get a handle on the amount of REC production. What
13 we don't know, what I don't know is, where are the
14 potential markets that it falls into?

15 You know, another complicating factor is
16 the wood facility in Berlin will certainly be operating by
17 that time. And, my recollection, and this is a
18 recollection, is that it has something like 400,000 RECs
19 annually under its long-term contract that come into Class I
20 I. But I think it has, at least at one time I think it
21 had at least another 100,000 RECs that it could produce.
22 And, whether those go to Class I New Hampshire or Class I
23 Connecticut is unclear. I assume they don't go to Class I
24 Mass. for the same reason in 2016 Schiller wouldn't go to
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1 Class I Mass. And, then, we don't know what other biomass
2 facilities in the region, you know, may come into the
3 market. We do know that, you know, the facility in
4 Vermont has been asked by its Board to present a proposal
5 to put on pollution control equipment. So, there are a
6 lot of variables beyond just saying "well, here's a
7 biomass plant, and I know its capacity and I know its
8 plant factor, and so I know how many RECs are there."

9 CMSR. HARRINGTON: Okay. So, basically,
10 just looking out three years, it's just to far to make an
11 accurate prediction basically?

12 MR. OLSON: That is my view, yes,
13 Commissioner.

14 CMSR. HARRINGTON: All right. Thank
15 you. Just so we kind of keep with the pattern of going
16 around, the gentleman that came in in the back, I'm not
17 sure what your name is, did you want to speak on this
18 issue?

19 MR. SALTSMAN: I do not. Mark Saltsman,
20 with Concord Steam.

21 CMSR. HARRINGTON: Okay. Mr. Patch.

22 MR. PATCH: I know I said I didn't want
23 to provide any oral comments today, but just a couple of
24 pieces of information I think might be useful to the
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1 that the amount being put into the fund exceeds 6 million,
2 that the Commission shall take such action as is
3 necessary, excuse me, to refund that amount to the
4 electricity providers on behalf of customers. And, again,
5 obviously, that could change as it goes through the
6 process.

7 But I just think it's important to note
8 some of those things for the record. Thank you.

9 CMSR. HARRINGTON: Thank you. Who would
10 be next, the OCA's Office?

11 MR. ECKBERG: Thank you, Commissioner.

12 The OCA has no specific comments to add to this very
13 technical discussion. We are not experts in the economies
14 or the marketplace for these RECs. We do appreciate
15 everyone coming today who are experts in that market and
16 trying to offer some comments. We would be glad to
17 participate in any additional technical sessions that are
18 held to discuss these matters. Clearly, our interest is
19 the overarching impact on ratepayers, the costs to energy
20 supply here in New Hampshire. Thank you very much.

21 CMSR. HARRINGTON: And, Staff.

22 MR. SPEIDEL: Thank you, Commissioners.

23 Staff has no comment at the present time. But we have
24 very carefully listened to all of the comments made today,
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1 Commissioners and the parties involved.

2 In terms of Senate Bill 148, and I'm not
3 taking a position on whether the Commission ought to
4 suspend its consideration pending that, but I just noticed
5 last night that a hearing has been scheduled next
6 Wednesday, at 9:30 in the morning, you know, before the
7 Senate Energy Committee on that bill. And, I think it's
8 important to note, since I've heard a couple of comments
9 this morning, at least from the load-serving entities,
10 that they would not be in favor of an increase in the
11 alternative compliance payment sort of floor, that Section
12 2 of that bill, beginning in 2015, would actually raise
13 the Class III from 31.50 to \$45, and then it would be
14 adjusted in 2016. And, so, I just think that's
15 information that might be useful to the Commission and the
16 parties.

17 That also contains -- Mr. Olson referred
18 to a provision that would allow for essentially returning
19 to ratepayers excess amounts that are collected into the
20 fund. And, at least as currently written in the bill,
21 and, obviously, it's subject to amendment as it goes
22 through the process or it might never get through the
23 process, it contains in Section 3 a provision that only
24 applies to 2012, and basically says that, to the extent
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1 and look forward to reviewing them in writing as they
2 might come in or as they are presented in the transcript.
3 Thank you.

4 CMSR. HARRINGTON: Thank you. Okay.
5 Once more we'll go around, and the gentleman from Public
6 Service.

7 MR. LABRECQUE: Thank you. Yes. On the
8 question of whether or not this process should be delayed
9 in favor of Senate Bill 148 process, in my opinion, this
10 is the forum where a lot -- it will be a lot easier to
11 gather the right experts, the right information, to put
12 together an informed review of this particular issue.
13 That Senate Bill 148 has a lot of stuff in it. And, I
14 just heard today that there's going to be an amendment
15 regarding waste-to-energy, and may be adjusting the
16 methane requirements. There's no way the Legislature, at
17 a hearing on this bill, is going to be able to do justice
18 to any one of the issues that are in that bill. I have
19 much more confidence in the process that would take place
20 in this room amongst the stakeholders.

21 Along the same lines, as I look at the
22 language regarding the "85 to 95 percent adjustment", it
23 occurs to me, I wasn't part of the process where that
24 language is developed, but this is -- Class III and Class
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1 IV relate to existing renewable assets. You know, Class I
2 and Class II, different animal, you're setting criteria
3 for new percentages that the Legislature deemed, you know,
4 appropriate going forward for new development.

5 I'm assuming, not being there, and there
6 are people here in this room who were there, I'm sure,
7 that there was some uncertainty as to what would shake out
8 in Class III, for example. And, perhaps it was unknown
9 how many of the six biomass units in New Hampshire would
10 ultimately qualify. And, as it turned out, only two of
11 them have. I'm sure it was also uncertain what would
12 happen with methane, including now where a lot of methane
13 units in New York State are qualified, and so there was a
14 lot of uncertainty. And, given that, you might think that
15 this language that's in the current statutes was designed
16 to handle either an under supply or an over supply in the
17 future. And, it was put in there presumably to allow the
18 PUC to gather, and I read it to say you could make this
19 adjustment annually, you could react to what's going on at
20 the time, and have a process here by which the requirement
21 is adjusted in response to all these market factors.

22 And, as we talked about over the last 30
23 or 40 minutes, it's very complicated. There's a lot going
24 on. It changes constantly. There is no way Senate Bill
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1 as opposed to having duplicative processes that, at the
2 end of the day, may have different responses or have
3 different outcomes, I should say, and then force another
4 revisit by the PUC at a later date, to come back and yet
5 again adjust the RPS percentages.

6 So, again, I'll conclude my comments,
7 and would just say, like Mr. Olson and Mr. Veilleux,
8 Senate Bill 148 is the venue that we believe this
9 discussion should occur.

10 CMSR. HARRINGTON: Commissioner Scott.

11 CMSR. SCOTT: Thank you. Thank you,
12 Mr. Stock. I was curious your reaction, like what I think
13 I heard Mr. Labrecque saying, and hopefully he'll correct
14 me if I'm wrong, is that perhaps this language should be
15 used in a more dynamic basis, meaning, obviously, even as
16 Mr. Olson has said, certainly going past 2014, the crystal
17 ball is very foggy and don't know what's going to happen.
18 Would not this -- utilizing this language in some kind of
19 ongoing basis and having groups like this together be
20 beneficial to everybody involved, as far as watching the
21 market, supply and demand, and making sure there's no
22 adverse impacts to the program itself?

23 MR. STOCK: Sure. Great question. And,
24 I guess one of the things, my response to that is, one of
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1 148, or any bill that's static in nature, is going to be
2 able to handle the next ten years, the ups and downs of
3 what might possibly go on in this market, whereas the
4 language that brought us here today potentially could.

5 So, I guess I would just reiterate that
6 I believe this is the appropriate forum to address this
7 issue.

8 CMSR. HARRINGTON: Thank you. Anybody
9 else on this side of the room would like to make an
10 additional comment?

11 (No indication given.)

12 CMSR. HARRINGTON: The other side?
13 Just, as you haven't spoke before, please identify
14 yourself, so Steve can make sure he knows who you are.

15 MR. STOCK: Jasen Stock, the New
16 Hampshire Timberland Owners Association. And, I guess I
17 just -- I wanted to just go on the record as saying that,
18 like Henry Veilleux and Mr. Olson's comments, we, the
19 Timberland Owners Association, also believes that Senate
20 Bill 148 embedded within that is the process to have this
21 debate and this discussion. And that, instead of
22 duplicating efforts, we feel it would be much more -- a
23 much more efficient process to work through that
24 legislative process and have the stakeholders work there,
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1 the elements of Senate Bill 148 is it does complicate
2 that, looking beyond this 2015, what the bill does is it
3 establishes a study commission to look at creating a
4 mechanism, a self-adjusting mechanism. So that, as we --
5 as this program moves forward, there is a mechanism
6 established that contemplates these shifts in markets.
7 And, I'll say these shifts can occur outside of Class III.
8 These shifts can occur in Class -- any of the renewable
9 classes. So, Senate Bill -- again, coming back, there is
10 a mechanism in there to bring a group, to establish a
11 study commission, again, in which the stakeholders would
12 be a part of that process, to look at this beyond just
13 2015, to ensure that, for the health of the program, that
14 there is a process, kind of a self-correcting process, so
15 that when we see these disruptions in the marketplace, the
16 program can adjust and move with those. Thank you.

17 CMSR. HARRINGTON: Does anyone care to
18 comment?

19 (No verbal response)

20 CMSR. HARRINGTON: Okay. Again, it
21 seems as if there's a few particular issues here that have
22 been brought up. And, one is the -- how to interpret or
23 implement the formula that's given in the law, where it
24 talks about the -- as we discussed today, the "85 to 95
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1 percent of the reasonably expected potential annual output
2 of available eligible sources after taking into account
3 demand from similar programs in other states."

4 Certainly, if anyone would like to give
5 us some clarification on how they think that should be
6 actually interpreted, that would be very helpful. There
7 was the issue that's been brought up as whether the word
8 "available" implies that, since there are no available
9 RECs, that that would imply that there are no available
10 eligible sources, as Mr. Olson, I believe had said, that
11 could mean the percentage would be 85 percent of zero,
12 which, of course, is zero. So, if any of the people would
13 care to comment on that.

14 There was also the issue of whether we
15 needed a technical session to try to jointly resolve what
16 that paragraph in the law actually means. So, if people
17 could also comment on that, we would find that very
18 helpful. And, again, those comments, the written comments
19 are due on the 21st, which are a week from today. And,
20 please, let's not forget the first part of this, which was
21 the idea of the "thermal carve-out", as it's called, and
22 we also prefer or would like written comments on those by
23 the 21st as well.

24 So, does anyone have an additional
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1 comment?

2 (No verbal response)
3 CMSR. HARRINGTON: Commissioner Scott?
4 CMSR. SCOTT: No. All set.
5 CMSR. HARRINGTON: That will close this
6 hearing on this docket for today. Thank you.
7 (Whereupon the hearing ended at 11:40
8 a.m.)
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