

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 29, 2010 - 10:12 a.m.
Concord, New Hampshire

NHPUC OCT18'10 AM11:24

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

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

Sandy Deno, Clerk

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

Reptg. Laidlaw Berlin BioPower, LLC:
Andrew W. Serell, Esq. (Rath, Young...)
Curtis Whittaker, Esq. (Rath, Young...)
Barry Needleman, Esq. (McLane, Graf...)

Reptg. the City of Berlin:
Christopher Boldt, Esq. (Donahue, Tucker...)

Reptg. Clean Power Development:
James T. Rodier, Esq.

Reptg. Concord Steam Corporation:
Mark Saltsman

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

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

**Reptg. Bridgewater Power, Pinetree Power,
Pinetree Power-Tamworth, Springfield Power,
DG Whitefield Power, and Indeck
Energy-Alexandria:**

David J. Shulock, Esq. (Brown, Olson & Gould)
Robert A. Olson, Esq. (Brown, Olson & Gould)

Reptg. New England Power Generators Assn.:
Sandi Hennequin, Esq.

Reptg. Edrest Properties, LLC:
Jonathan Edwards

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.

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P R O C E E D I N G

1
2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the prehearing conference in Docket
4 DE 10-195. For those of you who aren't familiar with our
5 processes here, let me describe what we're going to do
6 today. I'll start out with some brief procedural
7 background for the record. Then, I will turn to taking
8 appearances by the applicant and other parties that have
9 petitioned to intervene to participate in this proceeding
10 as formal parties. Then, we will allow those parties to
11 make their statements of positions in this proceeding. We
12 will address Petitions to Intervene. We will talk briefly
13 or hear what parties may have to say about the Motion for
14 Confidentiality. And, I'm assuming, as part of the
15 statements of position, we may be hearing something about
16 scheduling for this proceeding.

17 I also note that we have a number of
18 public comments, letters that have been filed, and looks
19 like there's at least one request to make a public
20 statement this morning. And, to the extent that there are
21 other individuals here who would like to make a public
22 statement, we will do that after we've addressed the
23 statements of positions and other matters that are raised
24 by the parties.

1 Our normal process at that time would be
2 to close the prehearing conference, and then the parties
3 would conduct a technical session, at which many of the
4 issues that we would be discussing this morning would be
5 addressed. And, we'll see if there's agreement or not on
6 issues such as scheduling and other issues that may arise
7 of a procedural nature.

8 So, with that, let me note for the
9 record that, on July 26, 2010, Public Service Company of
10 New Hampshire filed a petition for approval of a Purchase
11 Power Agreement with Laidlaw Berlin BioPower for the
12 purchase of energy, capacity, and renewable energy
13 certificates pursuant to RSA 362-F:9. According to the
14 Petition, the proposed Laidlaw facility is a 70 megawatt
15 biomass fueled renewable energy source, and purchases by
16 PSNH will help it meet obligations to purchase renewable
17 power as required by Chapter RSA 362-F.

18 On August 17, 2010, Laidlaw Berlin
19 BioPower filed a Petition to Intervene and a Motion for
20 Expedited Consideration. Among other things, Laidlaw
21 asserts that financing for and commencement of
22 construction of the project are highly dependent on the
23 contract becoming effective prior to November 10, 2010.
24 We issued an order of notice on September 1, setting the

1 prehearing conference for this morning.

2 I also note for the record that we have
3 the Office of Consumer Advocate's letter of participation.
4 And, we have Petitions to Intervene by Concord Steam Clean
5 Power Development, several wood IPPs, including
6 Bridgewater Power, Pinetree Power, Pinetree-Tamworth,
7 Springfield Power, Whitefield Power, and Indeck Energy.
8 We also have a Petition for Intervention from Edrest
9 Properties, from the City of Berlin, and from the New
10 England Power Generators Association. And, we have an
11 objection by Public Service Company of New Hampshire to
12 the Petitions to Intervene made by Clean Power, Concord
13 Steam, the wood IPPs, New England Power Generators
14 Association, and Edrest. I think that is the full list of
15 Petitions to Intervene that have been filed in advance of
16 the proceeding.

17 So, with that, then I'll turn to the
18 Applicant for -- let's just go around and just get the
19 appearances on the record, and then we'll get back to
20 statements of position.

21 MR. BERSAK: Good morning,
22 Commissioners. I'm Robert Bersak, from Public Service
23 Company of New Hampshire. With me today I have two of the
24 Company's witnesses that have filed prefiled testimony in

1 this proceeding, Mr. Terrance Large and Mr. Richard
2 Labrecque.

3 CHAIRMAN GETZ: Good morning.

4 MR. SERELL: Good morning,
5 Commissioners. My name is Andrew Serell. I'm from the
6 Rath & Young law firm. And, we represent Laidlaw Berlin
7 BioPower. I'm here this morning with my partner, Curt
8 Whittaker, also from Rath & Young; Barry Needleman, from
9 the McLane firm, also representing Laidlaw; and two
10 representatives from Laidlaw, Lou Bravakis and Ray Kusche.

11 And, I just wanted to note that we also
12 filed an objection to the various Petitions to Intervene
13 this morning. So, it may not have gotten to your desk,
14 but we did file one this morning.

15 CHAIRMAN GETZ: Okay. Thank you.

16 MR. RODIER: Good morning. Jim Rodier,
17 for Clean Power Development.

18 CHAIRMAN GETZ: Good morning.

19 MR. BOLDT: Chris Boldt, City Attorney
20 for the City of Berlin.

21 CHAIRMAN GETZ: Good morning.

22 MR. SHULOCK: David Shulock, and with me
23 is Robert Olson, from the firm of Brown, Olson & Gould,
24 for Bridgewater Power Company, LP, Pinetree Power, Inc.,

1 Pinetree Power-Tamworth, Inc., Springfield Power, LLC, DG
2 Whitefield, LLC, and Indeck Energy-Alexandria, LLC.

3 CHAIRMAN GETZ: Good morning.

4 MS. HENNEQUIN: Good morning,
5 Commissioners. My name is Sandi Hennequin, and I'm here
6 for the New England Power Generators Association.

7 CHAIRMAN GETZ: Good morning.

8 MR. SALTSMAN: Good morning, Mr.
9 Chairman and Commissioners. Mark Saltsman, Vice
10 President/General Manager of Concord Steam.

11 CHAIRMAN GETZ: Good morning.

12 MR. EDWARDS: Jon Edwards, for the
13 Edrest Properties.

14 CHAIRMAN GETZ: Good morning.

15 MS. HATFIELD: Good morning,
16 Commissioners. Meredith Hatfield, for the Office of
17 Consumer Advocate, on behalf of residential ratepayers,
18 and with me for the office is Ken Traum.

19 CHAIRMAN GETZ: Good morning.

20 MS. AMIDON: Good morning. Suzanne
21 Amidon, for Commission Staff. I have with me today George
22 McCluskey, an Analyst with the Electric Division, he's to
23 my immediate left; to his left is Tom Frantz, the Director
24 of the Electric Division; and to Tom's left is Grant

1 Siwinski, who is a new Analyst with the Electric Division.
2 Good morning.

3 CHAIRMAN GETZ: Good morning. Well,
4 then let's, Mr. Bersak, we'll give you the opportunity to
5 state the Public Service Company of New Hampshire's
6 position in this case. And, if you want to address
7 scheduling issues, please do that at this time. But let's
8 deal with interventions separately. And, if you also want
9 to address the Motion for Confidentiality at this point,
10 please do that as well.

11 MR. BERSAK: Thank you, Mr. Chairman.
12 Public Service Company of New Hampshire is pleased to
13 present to the Commission what we think is an innovative
14 power purchase agreement for review under the state's
15 Renewable Portfolio Standard law.

16 By the agreement that's before you, we
17 seek to comply with the Governor's goal of 25 by 25; that
18 is to obtain 25 percent of the state's energy from
19 renewable resources by the year 2025. The Governor's
20 initiative was implemented as a matter of law by the
21 Renewable Portfolio Standard law, which is RSA Chapter
22 362-F. As a matter of law, the state's electric energy
23 suppliers, including PSNH, must meet various annual
24 thresholds requiring increasing amounts of renewable

1 energy each year. Under this law, the electric energy
2 supply in New Hampshire must be made up of just under
3 one-quarter renewable energy, just under 25 percent of the
4 Governor's goal at the end of the RPS period.

5 Sixteen (16) percent of that goal must
6 come from renewable resources classified as providing
7 Class I RECs. The biomass plant proposed by Laidlaw
8 Berlin BioPower, which will be built in Berlin, and which
9 recently received unanimous approval from the Site
10 Evaluation Committee, will produce these needed Class I
11 RECs.

12 The power purchase agreement, or "PPA",
13 which PSNH has presented for approval, is the product of
14 detailed and extensive negotiations between Laidlaw and
15 PSNH. This is the fourth such PPA presented to the
16 Commission for review under the Renewable Portfolio
17 Standard law. The prior three, involving Pinetree Power,
18 Inc., Pinetree Power-Tamworth, and Lempster Wind, also
19 were the product of bilateral negotiations.

20 It is important to remember that, as
21 with all such other power purchase agreements, whether
22 they are with renewable energy plants or whether they're
23 from more traditional fossil, hydro or nuclear sources,
24 PSNH will make absolutely no profit as a result of this

1 agreement. PSNH has entered into this PPA to comply with
2 the legal requirements under the RPS law. And, we've done
3 it in a manner and with a deal that we believe provides
4 significant benefits and protections for customers and to
5 the state as a whole.

6 Moreover, this PPA has a unique what
7 I'll call an "insurance policy" to protect customers from
8 the potential for above-market costs. PSNH is very wary
9 of the problem caused by the potential for above-market
10 costs. We and the Commission are aware of the more than
11 \$2 billion in above-market costs borne by customers in
12 this state as a result of mandated purchases under federal
13 law. The vast majority of that \$2 billion in above-market
14 costs were received by some of the wood IPPs that want to
15 petition here today, complaining about the potential
16 impact on competition if this PPA is approved.

17 The "insurance policy" I referred to
18 provides PSNH with a future option to purchase the Laidlaw
19 plant. The insurance aspect of this protection is that,
20 if prices under the PPA have cumulatively been above
21 market at the time that the option may be exercised, that
22 cumulative above-market amount may be used as a credit to
23 purchase the plant at fair market value.

24 In the past, such as the two plus

1 billion dollars in above-market payments that were paid
2 out under PURPA, the customers had no means to recoup any
3 of that above-market payments that they have made. The
4 owners of those plants got to keep every penny, all
5 200 billion pennies of above-market payments.

6 The insurance policy in the PPA before
7 you provides a method to recapture any future above-market
8 amounts. This insurance policy will be protected by its
9 embodiment in a real estate option that will be recorded
10 at the Coos County Registry of Deeds. The contract
11 requires this option to be prior in right to any leasehold
12 or other estate and must be further protected by a title
13 insurance policy.

14 Some commentators have labeled this
15 so-called "insurance policy" as a backdoor effort by PSNH
16 to get around deregulation. I can see why those opposed
17 to this PPA would want to spin it that way, but I can
18 assure you that the possibility of exercising an option 20
19 plus years from now would be ultra-long planning even for
20 PSNH. And, as I mentioned, during that 20 plus years that
21 we may have to wait for the exercise to come to -- the
22 option -- the ability to exercise the option to come to
23 life, we are not making a penny on this deal.

24 No one knows what the electric energy

1 landscape will be or what the laws will be when that
2 purchase option could be exercised. But, even if PSNH
3 cannot or chooses not to purchase the plant at that time,
4 the contract still provides the benefit and protections to
5 consumers. Why? Because PSNH has the right to transfer
6 that option to a third party. We can sell that option to
7 some other developer who does want to or has the legal
8 ability to purchase the plant at that time. And, we could
9 take the money that we've gained from the sale of our
10 option right and credit it back to customers at that time.

11 Obviously, not everyone supports this
12 Laidlaw project. Anyone who monitored the recent Site
13 Evaluation Committee proceeding knows that. You've listed
14 the Petitions to Intervene in this docket. Primarily,
15 they're done by competing generators. We've got six
16 wood-fired plants, the New England Power Generators
17 Association and it's 19 members, Clean Power Development,
18 Concord Steam. All of these entities are part of the
19 competitive market, which would compete with the new
20 Laidlaw facility, and all of them find fault with the
21 Laidlaw PPA. But, not one of them acknowledges that PSNH
22 is just a very small participant in the overall New
23 England market. Every one of those competitive generators
24 has the ability to sell products produced to the many

1 dozens of potential buyers throughout New England. PSNH
2 does not create the market. We are not the only game in
3 town. If these other plants are not finding buyers for
4 their products in this large New England competitive
5 market, that is the impact of competitive market forces at
6 work. PSNH is not, and should not be forced to become,
7 the buyer of last resort, when every other buyer in the
8 marketplace decided not to buy from a particular merchant
9 generator.

10 In addition to the environmental
11 benefits that renewable plants provide, the Laidlaw plant
12 will create much needed jobs in the North Country. These
13 jobs in the construction and forestry businesses, as well
14 as in the day-to-day operations of the plant will be
15 significant. PSNH has provided expert testimony from
16 Dr. Lisa Shapiro indicating that the construction of the
17 Laidlaw facility would provide 470 average annual New
18 Hampshire jobs. Upon operation, the Laidlaw plant would
19 provide 40 direct jobs, and about 200 additional jobs. It
20 will pay taxes. And, there is the potential for millions
21 of dollars from federal subsidies and from federal
22 programs that could flow to the state's North Country if
23 timely financing of this project can be achieved.

24 Dr. Shapiro also testified that, on a

1 cumulative basis over the construction of the Laidlaw
2 plant, the state's economic -- economic output is
3 estimated to be \$152 million higher; the Gross State
4 Product, an estimated \$79 million higher than they would
5 be in the absence of the construction of this facility;
6 perhaps most importantly, New Hampshire's household
7 earnings are estimated to increase by a total of
8 \$46 million on a cumulative basis over the construction
9 period.

10 I am confident that the Commission does
11 not want to repeat and rehear the myriad issues that were
12 part of the Site Evaluation Committee process. This
13 docket is not the appropriate venue to try to appeal or
14 overturn that agency's decision. The issue before the
15 Commission in this docket is much narrower and distinct.
16 Is the PPA in the public interest? That's the issue; no
17 more, no less. That's what's set forth in RSA 362-F:9.
18 The law contains five factors to consider as part of the
19 public interest balance. PSNH has already provided
20 prefiled testimony from our President, Gary Long, as well
21 as from Mr. Large and Mr. Labrecque, who are accompanying
22 me here today, and from Dr. Shapiro, to demonstrate why
23 the PPA that PSNH has entered into with Laidlaw meets
24 every one of the factors to be considered under RSA

1 362-F:9, and why, on balance, it is substantially
2 consistent with the RPS law.

3 With respect to the matter of
4 scheduling, Mr. Chairman, Laidlaw has set forth in its
5 intervention reasons why it is very important for this
6 proceeding to move quickly. There are federal tax
7 dollars, there are federal subsidies, there are other
8 dollars that will be available, not just for them to
9 complete this plant economically, but that provide
10 economic benefits for the state and the local governments
11 as well.

12 Clearly, the events that were announced
13 yesterday up in Gorham just makes this all the more
14 important. The plant closing from Fraser's Gorham mill
15 will result in the loss of about 230 jobs. Dr. Shapiro
16 says construction of the Laidlaw facility would create
17 about 460, 470. This is a necessary project, and it's
18 needed right now.

19 With respect to our Motion for
20 Confidentiality, I think the motion speaks for itself, Mr.
21 Chairman. But, it is interesting, and I think important
22 to note, that, in the prior three proceedings under
23 Chapter 362-F, that is the two for the two Pinetree
24 plants, as well as the proceeding for Lempster, that

1 similar information was subject to a similar motion for
2 confidential treatment, and the Commission granted
3 confidentiality in those three prior contracts, based upon
4 the reasons that were set forth in the Motion for
5 Confidentiality filed by us in this proceeding.

6 To conclude, the jobs and the economic
7 benefits I discussed earlier are, as they say today,
8 "shovel ready". All that's needed is for the Commission
9 to fire the starting gun by reviewing the PPA
10 expeditiously and approving it. Thank you.

11 CHAIRMAN GETZ: Thank you, Mr. Bersak.
12 Mr. Serell.

13 MR. SERELL: Thank you, Commissioners.
14 I'll be very brief. Laidlaw seconds the comments made by
15 Attorney Bersak, for the reasons which he has stated and
16 for the reasons set forth in the testimony that's been
17 filed with the Commission. We're confident that this
18 project meets the requirements of RSA 362-F:9 and is in
19 the public interest.

20 With respect to the matters of
21 scheduling, we have outlined in our Request for Expedited
22 Consideration the reasons why we require action by this
23 Commission by November. And, as Attorney Bersak stated,
24 that is mandated by a number of our financing

1 contingencies, which are critical to getting this project
2 started and making it financially viable for all parties.

3 So, our primary interests today before
4 the Commission are to ensure that the Commission is aware
5 of those concerns, that we do everything possible to get
6 this thing addressed on an expedited basis, and that we
7 avoid relitigating the issues which have been already
8 addressed by the Site Evaluation Committee.

9 CHAIRMAN GETZ: Has there been any
10 activity by Laidlaw or PSNH to lay out a proposed
11 procedural schedule or any discussion with Staff, Consumer
12 Advocate, or any of the other parties? I'm assuming you
13 recognize there has to be some kind of discovery, some
14 kind of opportunity for due process, and responsive
15 testimony. Have you taken any steps in that regard?

16 MR. SERELL: Absolutely, we recognize
17 that. No, we contemplated that this morning would be an
18 opportunity to do that. So, we're certainly prepared to
19 sit down with Staff and have that discussion, and
20 hopefully come to an agreement with everyone.

21 CHAIRMAN GETZ: Okay. Thank you. Mr.
22 Rodier.

23 MR. RODIER: Thank you, Mr. Chairman.

24 CMSR. BELOW: Before we proceed, let me

1 just -- I'd just like to confirm if the facts asserted in
2 your petition -- Motion for Expedited Consideration are
3 all still true. On Page 3 of that and 4 of that, you talk
4 about how, if you don't receive approval by November 10th
5 of this year, that certain New Market Tax Credits might
6 not be available unless the financing transaction is
7 closed by November 15th. Is that still your belief?

8 MR. SERELL: I'm going to have Attorney
9 Whittaker answer that, if I may.

10 CMSR. BELOW: Okay.

11 MR. WHITTAKER: Commissioner Below, the
12 New Market Tax Credits are allocated to other entities.
13 They have indicated -- these are called "community
14 development entities", and they have allocations of the
15 New Market Tax Credits. They have allocated -- they have
16 provided an allocation to the Laidlaw project, contingent
17 upon a financial closing by November 15th. If we cannot
18 close by November 15th, our hope is that those community
19 development agencies will continue to hold their
20 allocations for the project. And, we believe that they
21 will, just given the importance of the project, but they
22 are limited in how long they can hold them. They cannot
23 hold them longer than the end of year. At that point,
24 their allocations disappear, and they must turn around and

1 do one of two things: Either they must contact Treasury
2 and convince Treasury to allow them a holdover of those
3 New Market allocations, for a limited period of time into
4 next year. We have no idea whether Treasury -- U.S. --
5 United States Treasury would go along with that. The
6 second thing they could do next year is again apply for
7 allocations of New Market Tax Credits, and then we would
8 apply to them for another allocation.

9 So, our point to you is simply this: We
10 have the allocations now to utilize those tax credits.
11 The conditions we are working with now are to close by
12 November 15th. We believe that, if that date slipped by a
13 matter of weeks, that we could hold the current
14 allocations together and still achieve a financial closing
15 this year, and then commence construction this year, which
16 is important for a second tax benefit, which is the
17 Investment Tax Credit grant under 1603 of the American
18 Resource -- or, American Recovery Act or something, I
19 don't have that quite right. But we have to start
20 construction this year in order to get the cash grant from
21 the U.S. government in lieu of the Investment Tax Credit.
22 That will be a relatively simple thing to do. We'll be
23 ready to roll and begin to commence construction and
24 demonstrate that to the satisfaction of Treasury, if we

1 can reach financial closing. So that the key for us is
2 the New Market Tax Credit allocation, which we very much
3 want to hold onto.

4 Also, as part of the current
5 allocations, part of that will be to set up a fund of
6 slightly over \$2 million, which will be available for
7 capital for related infrastructure, third party-related
8 infrastructure for this project, that will be made
9 available to third party -- to other businesses up in the
10 Berlin area who would be working as suppliers potentially
11 for this project.

12 CMSR. BELOW: And, is that related to
13 the New Market Tax Credits or the Investment --

14 MR. WHITTAKER: That's the New Market
15 Tax Credit.

16 CMSR. BELOW: Okay.

17 MR. WHITTAKER: That would be -- the New
18 Market Tax Credit closing would create a reserve of
19 approximately a little over \$2 million.

20 CMSR. BELOW: Okay. Thank you. That's
21 helpful.

22 CMSR. IGNATIUS: Mr. Whittaker, let me
23 expand on that. Having participated in the Site
24 Evaluation Committee process, as one of my duties here at

1 the Commission, I was a member of the subcommittee that
2 reviewed that filing. And, as I understand, in public
3 testimony from Laidlaw, if the Company were unable to
4 start construction by the end of December, and couldn't
5 qualify for the Investment Tax Credits and could not
6 qualify for the New Market Tax Credit, or if somehow it
7 were not extended into January, the project was still
8 financially viable. It would be better with those two
9 pieces, but it still could go forward. And, that the
10 "close by December" was not -- and attaining those two
11 pieces of funding was not required for the project to be
12 financially viable. Is that your understanding?

13 MR. WHITTAKER: Yes. And, that's --
14 and, it's the difference between saying "we must have this
15 in order to close", versus, "if we have this, we're much
16 more likely to close relatively sooner and create jobs",
17 and so forth. If we don't get the New Market Tax Credits
18 and we don't get the 1603 grant, what we have to do next
19 year is reassemble -- attempt to reassemble those
20 elements. It doesn't look like the 1603 grant will be
21 extended, but you will have an Investment Tax Credit. The
22 New Market Tax Credits will be there, but you must
23 reassemble them.

24 Our only point to you folks here, and I

1 think this is consistent with what was said in the SEC, is
2 you don't know that you've closed until you've closed.
3 You don't know that you've got that allocation of New
4 Market Tax Credits until you've got them. And, if we have
5 to go reassemble them, there's always a risk associated
6 with, number one, doing that, and there's a cost of delay
7 associated with doing that. What we're trying to express
8 to you now is we know we have these now. We know, with
9 these now, it greatly increases our ability to go ahead
10 and close this year. And, if we close this year, that
11 speeds up all of the benefits of development that are laid
12 out in PSNH's -- in PSNH's testimony.

13 If we cannot close this year, we have
14 never guaranteed that we will close next year. What we
15 have said is, we think we can reassemble enough of the
16 elements to close next year. And, we feel confident in
17 that. But nobody can guarantee a financial closing until
18 it's closed. We would rather take our birds in the hand
19 now and close on what we've got now, if the Commission can
20 act within the time frame that allows us to do that.

21 CMSR. IGNATIUS: So, you're saying that,
22 if you -- you can't guarantee that, with the loss of these
23 two tax credits, if that were to happen, --

24 MR. WHITTAKER: Uh-huh.

1 CMSR. IGNATIUS: -- that you would not
2 necessarily go forward with the project?

3 MR. WHITTAKER: No. No. We'd be going
4 full speed with the project next year, reassembling those
5 same elements, and attempting to close as soon as we
6 could.

7 CMSR. IGNATIUS: All right. But that's
8 not really my question, and I apologize if I'm being
9 inartful here. The testimony, as I understood in the Site
10 Evaluation Committee, was that, even if you were never
11 able to pull those two other pieces of funding into the
12 project, the project was still financially viable and it
13 would go forward. And, you keep suggesting something
14 slightly different in what you're saying.

15 MR. WHITTAKER: Well, I keep saying,
16 next year, if we lose those two elements this year, we
17 have to reassemble those elements, something like them.

18 CMSR. IGNATIUS: Well, and that's
19 different than what the statement was in the Site
20 Evaluation Committee.

21 MR. WHITTAKER: Well, I --

22 CMSR. IGNATIUS: So, I think that will
23 be issues I guess we'll hear in testimony.

24 MR. WHITTAKER: And, Barry Needleman is

1 over here raising his hand, because it is important we not
2 be inconsistent with -- and we're trying to -- I don't
3 think we're trying to be. So, I will call Barry up here
4 and we'll see if he can augment my statements.

5 CHAIRMAN GETZ: Mr. Needleman.

6 MR. NEEDLEMAN: Thank you. Just for the
7 benefit of the other two Commissioners, I was counsel to
8 Laidlaw at the Site Evaluation Committee, and hopefully I
9 can clarify this.

10 The Investment Tax Credit and the New
11 Market Tax Credit both enhance the ability of this project
12 to get financed. Neither of those -- neither of those are
13 essential to this project being financed. And, so, if we
14 lose either of those credits or both of them, the project
15 can and still will be financed. That's not the issue that
16 we are bringing to the Commission today for purposes of an
17 expedited hearing.

18 With respect to the New Market Tax
19 Credit, as Mr. Whittaker explained, those allocations will
20 expire by the end of the year. The allocatees who would
21 give us those tax credits have strong incentives to get
22 those allocations into the hands of the allocatees. Those
23 incentives include fund -- fees that they would get as a
24 consequence, and, also, the way the federal government

1 looks at giving new allocations to these allocatees is
2 their success in getting the prior allocations
3 distributed. So, there are forces at work on those
4 allocatees encouraging them to get those out there.

5 So, if this project looks like it's
6 going to go, if it looks like approval is close by the end
7 of the year, then we may be able to convince them to hang
8 on a little bit longer to our allocations. But, I think
9 it's probably fair to say, the longer this goes, the more
10 difficult it is to convince them to hang on to those
11 allocations. And, that doesn't mean we couldn't possibly
12 get new allocations next year, but it means the ones we've
13 got committed today, at this moment, we risk losing.

14 Does that clarify it, I hope?

15 CMSR. IGNATIUS: Thank you. Yes.

16 CHAIRMAN GETZ: Well, I'd like to follow
17 up somewhat, because I want to understand the critical
18 path of what's being sought. And, I think -- I want to
19 make sure I understand the connection between the
20 financial closing and the allocations. So, you're looking
21 for a financial closing by November 15, as I understand
22 it. And, I'm just wondering how much discretion there is
23 around that? In the filing that we have from July 26th,
24 there's, you know, it says "Power purchase agreement made

1 as of June 8, 2010." This particular copy isn't executed,
2 there doesn't appear to be signatures on it. I'm assuming
3 there's a writing between the parties, fully executed at
4 this point, and then it's subject to our approval. Is
5 that a fair understanding?

6 MR. NEEDLEMAN: Are you referring to the
7 Power Purchase Agreement?

8 CHAIRMAN GETZ: Power purchase
9 Agreement.

10 MR. NEEDLEMAN: I believe that's
11 correct.

12 CHAIRMAN GETZ: I don't know, is this
13 better for Mr. Whittaker to answer or --

14 MR. WHITTAKER: Mr. Chairman, the answer
15 is "yes", the PPA has been signed.

16 CHAIRMAN GETZ: So, and whoever "makes
17 the call" about proceeding with the financial closing,
18 what is the breadth of their discretion? Would they only
19 have that closing if we have a final order approving it?
20 Could they have the closing based on the agreement as
21 signed? You know, what are -- what's the breadth of
22 options?

23 MR. NEEDLEMAN: If I understand your
24 question, I think what you're asking is, those financial

1 entities that are going to provide the money for the
2 construction of the facility will require certain things
3 before we close. One of the issues that we discussed with
4 the Site Evaluation Committee is exactly what they will
5 require. One of the things that they are going to
6 require, we believe, is finality with respect to the Power
7 Purchase Agreement. I think they are going to want to see
8 that the Power Purchase Agreement has been approved. My
9 understanding is that, absent that sort of approval, there
10 would be too much uncertainty from the perspective of the
11 lenders to be able to sign off on that loan at that point.

12 CHAIRMAN GETZ: Okay. All right. I
13 think I understand that. Then, the other issue is "would
14 begin construction". I mean, I assume there's some broad
15 definitions of what "begin construction" means?

16 MR. NEEDLEMAN: You'd think there would
17 be. There actually isn't. It's sort of "in the eye of
18 the beholder". One of the things that we learned through
19 the testimony at the Site Evaluation Committee is that
20 "commencement of construction" depends on the particular
21 type of program or tax credit that you're talking about.
22 And, I believe, for example, in the context of the
23 Investment Tax Credit, "commencement of construction" does
24 not necessarily mean "putting a shovel in the ground". It

1 may mean, for example, if you were to place an order on a
2 major piece of equipment before the end of the year, such
3 that that order were irrevocable, that could constitute
4 "commencement of construction". So, that's at least an
5 example in that context.

6 CHAIRMAN GETZ: Mr. Whittaker.

7 MR. WHITTAKER: Just to augment
8 Mr. Needleman's description of that process. The U.S.
9 Treasury has given guidance on what would constitute
10 "commencement of construction", in the context of the 1603
11 grant. And, unfortunately, it did complicate the
12 "equipment order" option. It required equipment to be
13 both ordered and then manufactured and returned by the end
14 of this year. And, so, it has put a premium on field work
15 to begin out on the field. And that, right now, is what
16 most new projects are concentrating on. They're
17 concentrating on demonstrating that they have begun site
18 prep on the ground. And, that is the intention of Laidlaw
19 here. That is our focus, is the site preparation on the
20 ground.

21 CHAIRMAN GETZ: Okay. Thank you. Mr.
22 Rodier.

23 MR. RODIER: Thank you, Mr. Chairman.
24 Mr. Chairman, there were four things you listed: The

1 position of the intervenor, the arguments on intervention,
2 the Motion for Expedited Treatment, and the Motion for
3 Confidentiality. Do you want me to address all of those
4 now?

5 CHAIRMAN GETZ: Well, yes, if you could
6 just address the statement of Clean Power's position, if
7 you have any position on scheduling, if you have any
8 position on confidentiality, let's do that now, and then
9 deal with the Petitions to Intervene and any objections
10 afterwards.

11 MR. RODIER: Okay. All right. So, you
12 want a position, you don't want an argument? Okay.

13 CHAIRMAN GETZ: Well, it's sometimes
14 tough to distinguish between a "position" and an
15 "argument".

16 MR. RODIER: Okay. I got it. I got it.
17 I just want to begin by saying that, with respect to the
18 comments here, Attorney Bersak went through the, you know,
19 the option to Public Service after 20 years, and whether
20 that, in the eyes of some people, would constitute a
21 vehicle for backdoor entry into the generation market.
22 There's also a right of first refusal that could occur at
23 any time during the 20 year period. So, I just wanted to
24 mention that, to fill out the record a little bit.

1 And, I also want to begin by saying, you
2 know, you might want to consider taking administrative
3 notice of the record in the Site Evaluation Committee
4 hearing, because there is certainly a lot of material
5 there. And, I would agree with the parties that, to the
6 extent that information is available, and it's been
7 cross-examined, that, you know, you might want to do that,
8 in the interest of reasonably trying to expedite the
9 proceeding, okay? So, that, obviously, probably, the
10 Commission is already aware of that, but certainly CPD
11 would not oppose that.

12 As you may well now, CPD would like to
13 construct a biomass plant a couple miles down river from
14 the Laidlaw project in Berlin. Now, CPD has got a couple
15 of things that it shares with Laidlaw. One of which is,
16 it can't build its project without a PPA; neither can
17 Laidlaw. It's abundantly clear from the Site Evaluation
18 Committee. It's got nothing to do, as was contending,
19 that sort of "you have the whole rest of the world you can
20 sell your power to, why don't you just do that?" Because
21 of the facts of life in trying to construct a biomass
22 power plant, you need a PPA, okay? So, certainly, CPD
23 can't be blamed for being very interested in these
24 proceedings, because it needs the same thing as Laidlaw.

1 And, also, all the -- a lot of the discussion about the
2 tax incentives there, all of that applies to CPD, who's
3 already got all of their commitments lined up.

4 So, that's really, you know, from our
5 point of view, what the proceeding is about. And, I don't
6 want to get into it a whole lot, but you've heard the
7 expression the "direct negotiated approach" means
8 something, it's code for something. And, as the
9 Commission knows, in 09-067, CPD filed a complaint,
10 basically because it was, you know, totally rebuffed by
11 PSNH, in terms of wanting to make its pitch. Didn't
12 demand a PPA, it was looking for an opportunity to discuss
13 a PPA with Public Service. That proceeding is still wide
14 open, as the Commission knows. And, that's kind of like
15 the antithesis of the "direct negotiated approach". So,
16 that's really, it's no surprise what, you know, our
17 interests are here.

18 I just want to say, with respect to the
19 intervention, there's opposition here, including
20 opposition by Laidlaw, which is not even a party yet, to
21 the intervention of other people. But, in nowhere, in
22 either Public Service's objection or Laidlaw's objection,
23 have they cited any PUC case law or any regulatory case
24 law that would say a competitor shouldn't be competing in

1 the hearing before the PUC. Certainly, you've got a
2 number of proceedings going on right now, I can think of a
3 couple of them on the electric side, like the Docket
4 10-160. You've got testimony filed by TransCanada and
5 Constellation. There are others where competitors have
6 always been entitled to intervene in the past, in the --
7 like, you know, all of the Energy Service Default Rate
8 proceedings, for example. Certainly, on the telephone
9 side, you've always allowed competitors to intervene
10 there. So, I think, you know, what you're being asked for
11 here is just a wholesale departure from decades of
12 precedent here as to how competitors have been handled.

13 They cite cases having to do with
14 standing to appeal. But the test for intervention, as the
15 Commission knows well, Mr. Chairman, I've heard you say it
16 many times, "cognizable interest". It's a much lower
17 standing than the cases that these people have cited for
18 standing to take an appeal. Okay.

19 With respect to the Motion for Expedited
20 Treatment, certainly CPD is in favor of keeping the
21 proceeding moving. We tried to do that at the Site
22 Evaluation Committee, because time is our enemy as well.
23 I do want to point out, though, that a letter agreement
24 was entered into between PSNH and Laidlaw in September of

1 2008, and that's two years ago, the letter agreement on
2 the PPA. And, therefore, here we are two years later,
3 before the Commission here, talking about how, you know,
4 we're at the eleventh hour and the world could stop
5 spinning if this thing is not approved. So, that's my
6 only comment there.

7 Certainly, we would not oppose any kind
8 of a schedule that arrives at an answer that's consistent
9 with due process, as you pointed out, and consistent with
10 the Commission's duty to explore this agreement.

11 Now, finally, Motion for
12 Confidentiality. Obviously, the Commission does
13 frequently, and usually, grant motions for
14 confidentiality. That's to protect disclosure of
15 confidential information to the public, okay? The only
16 thing I want to add here is that, if, hopefully, the
17 Commission, for example, should allow CPD to intervene, I
18 don't think that means that CPD doesn't get to see the
19 confidential information. Because, as an intervenor with
20 rights to litigate our issues, we can't operate in the
21 dark trying to guess what's in the confidential
22 agreements. And, so, I think the Commission has tried to
23 balance these interests in recent years. So, I just want
24 to, in closing, wanted to mention that point. Thank you

1 very much.

2 CHAIRMAN GETZ: Thank you, Mr. Rodier.
3 Then, let's -- let's see. Mr. Shulock. And, just to
4 demonstrate the flexibility of the Commission, in terms of
5 procedural matters, since Mr. Rodier did address
6 intervention, why don't you include that, and we can
7 eliminate the latter round of discussions.

8 MR. SHULOCK: Will do.

9 CHAIRMAN GETZ: And, then, we'll let
10 PSNH and Laidlaw respond last, in terms of objection.

11 MR. SHULOCK: Good morning. Our initial
12 position is relatively simple. We think that the
13 Commission should fully explore the implications of a 20
14 year contract for a wood biomass facility in the North
15 Country. We have substantial concerns about the effect
16 that some of the provisions in this contract may have on
17 our wood markets. Wood is our lifeblood. And, we don't
18 -- we don't think that the Commission should expedite the
19 proceeding to the point where it's not really possible for
20 parties to get full and fair discovery into those issues
21 and for Commission to explore them.

22 Our position on the contract would
23 certainly be subject to change and to being more fully
24 developed after that discovery is completed.

1 In terms of scheduling, PSNH took years
2 to negotiate this contract. And, they're asking for
3 approval in 45 days. That appears to be a very tight
4 schedule. The wood plants would not be opposed to an
5 expedited schedule that did allow for a full and fair
6 discovery, production of testimony, if we were to decide
7 to do that, and then discovery on that testimony. But 45
8 days appears to be quite tight for that.

9 In terms of confidentiality, we agree
10 with Mr. Rodier that confidentiality is to protect this
11 information from the public, not from participants. We
12 think that we could probably work out a protective order
13 that could satisfy our need for the information and
14 Laidlaw's need for confidentiality. Although, I would
15 point out that, when you're balancing to determine whether
16 that information should be kept confidential, this is a 20
17 year commitment for ratepayers and for the public. And
18 that, I think, substantially changes that balance. I
19 mean, for instance, when the wood plants originally got
20 their 20 year rate orders or their 10 year rate orders,
21 those numbers were not confidential. All right? And, we
22 were able, because they were 20 year commitments, were
23 somewhat insulated by the effects of having that financial
24 information public.

1 For purposes of our Motion for
2 Intervention or Petition for Intervention, the wood plants
3 have identified four substantial economic interests that
4 might be affected by provisions of this 20 year PPA. And,
5 those include the effect that the PPA may have on the
6 basic availability of wood fuel for the wood plants and
7 the cost of that fuel. An interest in the effect that the
8 PPA will have on the markets for the wood plants'
9 products, an interest that is developed by PSNH's request
10 for full cost recovery, which would require a
11 determination that the rates within this contract are
12 reasonable will have on our tariffed rates. And, then,
13 there's a general interest in assuring that solicitations
14 for large blocks of power for large blocks of time are
15 competitive, because that would have an effect on the
16 market for both our inputs and our outputs.

17 The one interest that I'd like to
18 address today is the effect that the provisions of the PPA
19 may have on the price -- the availability and price of
20 wood fuel. And, as I said earlier, wood fuel is the wood
21 plants' lifeblood. It is our primary expense. We can't
22 operate without it. And, we can't operate it if the
23 market price is increased to the point that we simply
24 can't afford it anymore given the price that we get for

1 our power. The PPA and the Laidlaw project will create a
2 very large demand for wood over a wide geographic area.
3 Laidlaw, from the PSNH's testimony, is proposing a
4 100-mile radius for the procurement of wood. And, that
5 will interfere with the other wood plants' localized wood
6 supplies. There's overlap in that radius. Both --
7 Because of the provisions of the PPA, both Laidlaw and
8 PSNH will be insulated from the full effects that the
9 increased demand will have on prices. Because Laidlaw
10 will have the Wood Price Adjustment clause, and PSNH has
11 the ability to pass on reasonable increases in the market
12 price of wood onto its ratepayers.

13 CHAIRMAN GETZ: Mr. Shulock, let me make
14 sure I understand this line of argument. So, is it
15 essentially the position that, to the extent the purchase
16 price under the PPA is not consistent with a market price,
17 it would have these potential negative effects? And,
18 that's the, I guess, the basis for your position and the
19 basis for your Petition to Intervene?

20 MR. SHULOCK: The effect on the wood
21 market and on the price of wood affects our economics. It
22 goes directly to our bottom line. And, so, we have that
23 direct substantial economic interest in what happens in
24 this proceeding. The PPA provisions that are problematic

1 in that regard are the wood pass-through provision,
2 because Laidlaw is then insulated from what happens in its
3 wood market, to an extent that the wood plants are not
4 insulated. And, so, there's room in that market for
5 driving up the price to a level that Laidlaw may be able
6 to afford, but wood plants, who don't have a Wood Price
7 Adjustment clause, based on whatever index, would not
8 have.

9 CHAIRMAN GETZ: All right. Thank you.

10 MR. SHULOCK: Then, there's the
11 additional issue of the purchase option. And, if the
12 facility were to be purchased by PSNH, then that
13 pass-through would be direct to ratepayers. There
14 wouldn't be the contract clause in between.

15 So, it's really that the size of the
16 Laidlaw facility, its projected radius for drawing wood,
17 and the mechanisms in the PPA, those may disrupt the wood
18 markets that are localized to the other wood plants
19 enough, and may raise the price of their fuel enough so
20 that some of those plants have to close seasonally or some
21 may have to close altogether.

22 Now, we believe that that economic
23 impact is sufficient for us to be awarded intervenor
24 status under the mandatory standard. But the effect on us

1 goes further than that, because it raises issues that the
2 Commission is required under statute to review when
3 determining whether the PPA is in the public interest.
4 And, we detailed those in the papers, so I won't go
5 through all of them, but there are two or three that I'd
6 like to touch on. One is that the Commission has to
7 determine the consistency of the PPA and its provisions
8 with the purposes and goals of the state's RPS. Now, PSNH
9 has focused on the purposes and the provisions of the
10 Class I RPS. Okay? But their chosen method will have an
11 impact on the wood plants. And, it goes directly to the
12 environment -- the economic viability of the wood plants.
13 Okay? The wood plants are eligible or may become eligible
14 for the Class III RPS. Class III RPS is specifically
15 designed to help support existing wood plants who have
16 come off a rate order. And, so, PSNH's chosen method for
17 procuring Class I RECs may have a negative effect on the
18 purposes and goals of the Class III RPS.

19 And, the PPA that PSNH has chosen is not
20 the only way that it can fulfill that procurement
21 requirement. For example, PSNH can buy wind, and it's
22 done that. But, even if it were to limit itself to
23 biomass, there are other new proposed facilities that,
24 because they're smaller in size, and because they're

1 disbursed throughout the state, will draw wood locally to
2 their plants, and they won't have the same effect on the
3 wood market that this PPA would have.

4 Secondly, the Commission has to
5 determine the economic effect of this PPA as part of the
6 public interest standard. And, we think that the
7 Commission should question whether this PPA is in the
8 public interest, if it would have a negative effect on the
9 continued viability of the other wood plants, because that
10 will have economic effects on our employees. They may
11 lose their jobs. It will have economic effects on the
12 local suppliers of our -- of the wood plants' wood who may
13 not be able to transport to Laidlaw. And, it may have
14 economic effects on our host communities who have
15 businesses that are, you know, in part support, they have
16 lunch counters, *etcetera*, for our employees, tax dollars,
17 *etcetera*. I don't believe that Dr. Shapiro's testimony
18 covers those effects. All right? So, that testimony
19 states that there will be 45 new jobs at the Laidlaw
20 facility. Well, that may come at the expense of 45 jobs
21 at the other wood plant -- other wood plants. Is that an
22 economic benefit?

23 Next, I'd like to respond briefly to
24 some of the arguments that PSNH has made. And, I have to

1 say that I haven't really had time to read the City of
2 Berlin's or Laidlaw's objections to intervention that they
3 came just this morning. But PSNH's first argument is that
4 it has Class I percentage purchase requirements, and that,
5 as a group, the wood plants can't satisfy those. Well,
6 there are two wood plants that can satisfy some. But,
7 then, secondly, that really turns the intervention
8 standard on its head, because it looks at the effect of
9 this docket on PSNH when it -- the intervention standard
10 looks at the effect of the docket on the wood plants.
11 And, we have our economic interests that go to the wood
12 fuel supply and economic viability.

13 PSNH's second argument states that,
14 because there were bilateral negotiations with the
15 Pinetree plants, there can be no harm to the wood plants
16 from a non-competitive procurement process, another
17 bilateral negotiation. But the Pinetree transactions are
18 not comparable to the Laidlaw transaction. And, that's
19 because of the megawatt size. The two Pinetree plants are
20 just about half the size of the Laidlaw plant. And, the
21 Laidlaw plant is just 27 megawatts smaller than all of the
22 other wood plants put together. The Pinetree contracts
23 were for three years, not for 20. There's a substantially
24 smaller obligations to ratepayers and a small --

1 potentially smaller effect in the markets from a three
2 year contract than there is with a 20 year contract.

3 And, then, the Wood Price Adjustment
4 clause in the Pinetree contract is different, mainly
5 because of the size of the facility. I mean, this PPA
6 subjects 700,000 tons of wood to a Wood Price Adjustment
7 clause and a pass-through to ratepayers, and a much larger
8 geographic market than is affected by the Pinetree plants.
9 And, a way of looking at that is that the Wood Price
10 Adjustment clause in the Pinetree contracts didn't have an
11 effect on anybody. But the Wood Price Adjustment clause
12 in the Laidlaw contract may have an effect on everybody.
13 So, because of the size of the transaction, the effect is
14 quite different.

15 PSNH has argued that, and I have to
16 pause for a second, we raised the issue that this will
17 effect our tariff rates. PSNH said "well, it's a
18 competitive market. Go buy your power elsewhere. You can
19 eliminate any harm that might occur to you. And, because
20 you can do that, there is no direct impact on you through
21 your rates." Well, if you follow that line of reasoning,
22 then there's no reason for the OCA to appear here for
23 residential ratepayers. So, that seems like a false
24 argument to me. And, if you were to put it in the context

1 of the cases that PSNH cites, which are zoning cases, it's
2 the equivalent of saying that "no one has standing to
3 challenge a town's zoning amendments or to challenge the
4 grant of a variance to a neighbor, because they can always
5 buy a property in the next town and move." So, if you can
6 -- you can mitigate your damage, so you have no standing.
7 But we don't really believe that that argument works.

8 Secondly, the -- or, lastly, PSNH has
9 raised a general argument that "competitive interests are
10 insufficient to grant standing." And, I would reiterate
11 Mr. Rodier's concerns, that this would really change years
12 and years and years of precedent and practice with regard
13 to the way that the Commission has handled competitive
14 interests before. But, in this case, I mean, even if you
15 were to look at the cases that were cited by PSNH, which
16 were zoning cases, this is not a zoning case, and this is
17 not the general case. Here, the Commission must make a
18 public interest determination. And, that public interest
19 determination, in part, turns on the effect of the PPA on
20 competition and competitive markets. The Commission must
21 consider the extent of the PPA -- to which PSNH's
22 procurement promotes market-driven, competitive
23 innovations and solutions. That comes from RSA F:9,
24 II(d). And, the Commission must also consider the

1 restructuring principles of fully competitive and
2 innovative markets, and market competition with minimal
3 economic regulation of generation. So, the Commission is
4 specifically charged with looking at competitive interests
5 when it considers the public interest in this case.

6 And, just as recently as July of this
7 year, the Commission permitted TransCanada to intervene in
8 PSNH's 2009 Energy Service Cost Reconciliation case,
9 simply because it was a competitor of PSNH. Thank you.

10 CHAIRMAN GETZ: Well, Commissioner
11 Ignatius.

12 CMSR. IGNATIUS: Thank you. I wanted to
13 ask you about something you said a moment ago, that you
14 were concerned about the size of the plant being
15 70 megawatts, and that the radius around which it would
16 draw wood was too great. Aren't those issues that are
17 within the Site Evaluation Committee proceeding, on
18 whether or not the plant itself is in the public interest?

19 MR. SHULOCK: The Site Evaluation
20 Committee may have looked at those issues. But it is --
21 we submit that it's a specific public interest issue that
22 this committee is charged -- or, this Commission is
23 charged with looking at on its own.

24 CMSR. IGNATIUS: So, you're saying that

1 part of the scope of this proceeding should be not simply
2 whether the Purchase Power Agreement is in the public
3 interest, but whether the Laidlaw Berlin BioPower plant
4 itself, as proposed, is in the public interest?

5 MR. SHULOCK: No. The provisions of the
6 PPA have an effect. But, to get to that effect, you have
7 to look at those wood markets.

8 CMSR. IGNATIUS: All right. Thank you.

9 CHAIRMAN GETZ: Mr. Shulock, a question
10 about the -- a follow-up on the intervention issues. Is
11 there, and I guess this goes to the issue of whether
12 there's an identity of interests and whether there should
13 be some consolidation of interventions, if the
14 interconnections are granted. Is there a real discernable
15 distinction between the interests of Clean Power, your
16 clients, the New England Generator -- Power Generator
17 Association, and the -- and Concord Steam?

18 MR. SHULOCK: I haven't really studied
19 their interests. But I believe that NEPGA doesn't have
20 all of the same interests that we would have. I believe
21 their interest goes primarily to the competitive market --
22 the competitive procurement process. So, it may touch on
23 one issue, but not on all of the same ones.

24 CHAIRMAN GETZ: So, they might be a

1 subset of --

2 MR. SHULOCK: Right. Yes.

3 CHAIRMAN GETZ: -- the larger group of
4 issues that you and others --

5 MR. SHULOCK: Yes. And, I haven't
6 really given thought to how existing facilities, with
7 existing economics, might have different interests from
8 facilities who are developing and seeking their PPA in the
9 first instance, that there may be some conflict there, is
10 what I'm saying, that would make joint representation
11 inappropriate.

12 CHAIRMAN GETZ: All right. Thank you.

13 MR. SHULOCK: Not that I haven't given
14 it a lot of thought.

15 CHAIRMAN GETZ: Okay. Thanks.

16 Ms. Hennequin.

17 MS. HENNEQUIN: Hi. Good morning again.
18 The New England Power Generators represent competitive
19 electric generators here in New England. We have 19
20 member companies, and five in New Hampshire. I just
21 wanted to kind of state that. As far as our position,
22 we're not offering a statement of whether we think the
23 contract is proper or not. What really compels our
24 interest and involvement in this case are really the

1 process issues and their broader implication for our
2 members. And, there's really two issues that I wanted to
3 touch on. The first I think has already come up, and
4 that's docket 10-160. As we stated in our prefiled
5 testimony in that case, we would love it if all the
6 procurement dockets could be combined as one, but we
7 understand it's probably not feasible. So, what we're
8 really asking is that this PPA not be considered on a
9 schedule whereby the outcome of this docket 195 somehow
10 renders the outcome of what we view the more generic
11 procurement issues in 10-160 as meaningless. So, we have
12 concerns that there are these dockets, and there's
13 several, there's also the IRP docket that will probably be
14 coming soon, there's also the Clean Power Development
15 docket, that all of these kind of touch on some of the
16 same issues. And, what we've -- one of our concerns is,
17 if we move, especially on an expedited basis, on the
18 Laidlaw PPA, that we might get an outcome that somehow
19 prejudice or goes against the outcome of this other
20 docket, 10-160. So, that's one of our concerns that we
21 wanted to raise.

22 Our second process issue is just about
23 the Laidlaw PPA itself. As we stated in our Request to
24 Intervene, we believe the competitive electric markets

1 work the best when it's a very fair, open process. While
2 we're not prescribing what the method is to get at that,
3 we think its just really important and an issue that
4 really needs to be considered in this docket is making
5 sure that any other interested market participants were
6 also able to be considered in this process as well.

7 Did you want me to also touch on our
8 reasons why we believe we should intervene?

9 CHAIRMAN GETZ: Please.

10 MS. HENNEQUIN: Okay. First of all, I
11 just saw the opposition to our intervention this morning.
12 But I guess a couple of points that I wanted to raise. We
13 have historically participated in these type of
14 proceedings. Our membership would be prejudiced by the
15 outcome. Kind of reinforcing that point, we were granted
16 intervention status in docket 10-160, and we really
17 believe that a lot of the procurement issues that
18 compelled our involvement there are very similar in this
19 docket as well. And, this is very similar to what I just
20 stated in our position, we stated in our intervention
21 request, that we, as an association, do have a commitment
22 to open, fair and transparent markets. And, as such, we
23 really do have an interest in ensuring that the
24 solicitation process, or whatever method was used to reach

1 this PPA, that it really was a fair process.

2 And, there was one other comment that I
3 wanted to make in reading through the opposition. There
4 was a statement that "none of our generators would qualify
5 for the New Hampshire Class I standard", and, because of
6 that, they're arguing that -- that that wouldn't be a
7 basis for us to intervene. And, I guess I reject that as
8 being somewhat narrow, and also suggesting that someone
9 knows the commercial interest and the commercial plans of
10 all 19 of our member companies. I think that's a
11 statement I wouldn't be willing to make.

12 So, given that, that's -- those are the
13 reasons why we believe we should be granted the ability to
14 intervene. That's our initial position. And, I'd be
15 happy to answer any questions.

16 CMSR. BELOW: I do have a question,
17 Ms. Hennequin. You referred to your support for "open,
18 transparent markets". Does the amount that your members
19 get paid for their energy and/or capacity through
20 bilateral contracts get publicly disclosed at some point
21 through FERC or otherwise?

22 MS. HENNEQUIN: Any contract that would
23 have -- I mean, would have to be filed with FERC, I don't
24 know if it would have all the information, if some would

1 be redacted. I would have to check on that. I think it
2 varies by contract and by process.

3 CMSR. BELOW: Okay. Thank you.

4 CHAIRMAN GETZ: Okay. Thank you.

5 MS. HENNEQUIN: Thanks.

6 CHAIRMAN GETZ: Mr. Saltsman.

7 MR. SALTSMAN: Thank you. Hopefully, I
8 can be as precise and clear as all the attorneys that have
9 been representing a variety of companies here this
10 morning. We struggled to -- whether to intervene in this
11 process or not, because of a variety of issues in our
12 company, involvement in different entities. So, I should
13 disclaim that or claim that now. We have a member of our
14 company, in Concord Steam, that is also involved in Clean
15 Power Development. But I would like to make it perfectly
16 clear to this Commission that that is not why I stand
17 before you this morning. I stand before you this morning
18 because I don't believe that this Power Purchase Agreement
19 is in the public interest. And, certainly, the Commission
20 is well aware that it has a responsibility to all of the
21 ratepayers of New Hampshire, not just this contract, not
22 just, in fact, the ratepayers that are under the service
23 area of Public Service of New Hampshire.

24 This contract, this PPA will affect

1 Concord Steam ratepayers as well. I'm not talking about
2 Concord Steam -- the Concord Power & Steam Development,
3 which is a separate entity from Concord Steam, I'm talking
4 about the utility, Concord Steam. This Power Purchase
5 Agreement will adversely affect our ratepayers. That's
6 why -- and that's our position on this contract.

7 I'd like to cite a couple of things that
8 go to schedule. For the same reasons that have been cited
9 by several of the other intervenors here this morning, I
10 think that an expedited schedule needs to be carefully
11 considered. I'm not saying that it would be unreasonable,
12 but I think it needs to be carefully considered whether
13 that it is in the best interest of the public to have this
14 Power Purchase Agreement approved on an expedited
15 schedule.

16 Thirdly, on the confidentiality issue,
17 there's -- I think there's a number of reasons that have
18 been pointed out, and I would also stress as well, that it
19 would be in the interest of those of us who intervened to
20 know where Public Service and Laidlaw have established
21 their baseline cost of wood and how that is being
22 recovered. And, without being privy to that information,
23 we really don't -- we really won't understand that.

24 And, then, if you'd like me to address

1 my reasons for intervention?

2 CHAIRMAN GETZ: Please. I think you
3 have, in some respect, already mentioned those.

4 MR. SALTSMAN: Somewhat. But there's a
5 little more detail that I think would be useful to the
6 Commission. Now, in RSA 374-F, which is basically the
7 rules applying for the restructuring of it, talks about
8 that, under F:1, Paragraph I, it talks about that part of
9 the reason for that law was that it would "reduce costs to
10 customers while maintaining safe and reliable electric
11 service with minimum adverse impacts on the environment.
12 Increased customer choice and the development of [a]
13 competitive market for [the] wholesale and retail
14 electricity service [which] are key elements [of] a
15 restructured industry."

16 Now, I don't believe that this Power
17 Purchase Agreement is going to achieve that. Because,
18 essentially, it's creating a monopoly on the Class I REC
19 market, in particular, for the biomass plants. I think
20 it's going to be -- make it very, very difficult for
21 anybody else to develop a project in this state if this 70
22 megawatt facility goes forward.

23 And, secondly, there's, in Paragraph II,
24 it states "Article 83 of the New Hampshire Constitution

1 which reads in part: "Free and fair competition in the
2 trades of industries is an inherent and essential right of
3 the people and should be protected against all monopolies
4 and conspiracies which tend to hinder or destroy it." I
5 think, effectively, if you allow this Power Purchase
6 Agreement to take place, we end up with one company,
7 although it's Laidlaw and PSNH, it's really PSNH, they
8 will have a 50 megawatt station over in Schiller, at the
9 Schiller Station over in Portsmouth. They will have this
10 70 megawatt station in Berlin, controlling 120 megawatts'
11 worth of REC power. And, more than that, the real issue
12 is, they will be controlling 1.2 million tons of wood in
13 the state. Effectively, you're allowing them to create a
14 monopoly. A monopoly is, in economics, and I'm sure you
15 know this, but I just want to state it for the record, in
16 economics, a monopoly exists when a specific individual or
17 enterprise has sufficient -- "sufficient", key word,
18 sufficient control over a particular product or service to
19 determine significantly the terms on which other
20 individuals shall have access to it. This will create a
21 monopoly. This Power Purchase Agreement, with
22 pass-through costs, will create a monopoly. And, it's not
23 -- it's not just a natural monopoly, but it's a coerced
24 monopoly.

1 Most importantly, this is going to have
2 a very negative and adverse effect on Concord Steam's
3 ratepayers, because of the 100-mile radius, and the fact
4 that they're entering into a contract with Cousineau, who
5 doesn't get wood from the North Country, but buys wood
6 from the very same area that we buy wood for for our
7 suppliers, from our suppliers for our ratepayers, they
8 will -- this will definitely affect the cost of energy for
9 Concord Steam.

10 I know that the Commission has asked us,
11 in previous cost of energy hearings, what will the impact
12 be, way back, excuse me, way back when we were first
13 coming back on wood, the Commission asked "if Schiller
14 Station, which was coming on at about the same time, would
15 have an adverse impact?" We stated "yes, it would." When
16 we originally planned to come on line with our -- going
17 back to wood at our facility, wood was \$16 a ton. When
18 Schiller Station came on line, wood jumped to \$30 a ton,
19 and soon was significantly over that.

20 We're going to have the same thing
21 happen here again. Not because -- not because it's Public
22 Service entering into a PPA, but it's because it's Public
23 Service entering into a PPA that's way too big, has a
24 much, much, much, too much buying power in the wood

1 market. That's the issue.

2 So, those are a number of the reasons
3 that we'd like to intervene. And, there's a lot more that
4 we'd like to testify about, if given the opportunity by
5 the Commission. Thank you.

6 CHAIRMAN GETZ: All right. Thank you.
7 Mr. Boldt.

8 MR. BOLDT: Thank you, Mr. Commissioner.
9 For the record, Chris Boldt, Donahue, Tucker & Ciandella,
10 the City Attorney for the City of Berlin. The City is in
11 a position of being cautiously supportive of the PPA. We,
12 obviously, need more in-depth review of it, but we are
13 vitally interested in this project. As was referenced
14 throughout the SEC process, this is of vital import to the
15 City's citizens, the North Country as a whole. Our
16 intervenor status is based on being the host community.
17 We have direct and important needs to know that this
18 process is consistent with our expectations, as a result
19 of the SEC, that our tax base is going to benefit as we
20 are expecting it to. And, as -- And, to make sure that
21 our ratepayers and citizens are adequately protected. The
22 City has a unique position to bring, in that our history
23 of knowledge with this site, with the facility, with the
24 power generation abilities can bring to bear and help the

1 PUC evaluate this process.

2 We are also cautiously supportive of the
3 scheduling request to expedite, because of the import on
4 our citizens to see this project brought to fruition as
5 soon as possible. So long as it does bear out to prove to
6 be as we are expecting.

7 From a standpoint on the confidentiality
8 issues, however, we do believe we need to see the
9 unredacted materials, just so that we can confirm the
10 documentation, the expectations, evaluations. We have no
11 problem, however, and do fully expect that we would be
12 able to enter into a standard confidentiality agreement so
13 that these materials are protected under the terms of
14 91-A.

15 I'm happy to answer any questions that
16 you have. But, short, sweet, and to the point is my goal.
17 And, we are here as the host community and ask to be fully
18 intervened.

19 CHAIRMAN GETZ: One question, Mr. Boldt.
20 I may have misheard one of the previous speakers. Is the
21 City taking a position in opposition to some of the
22 Petitions to Intervene?

23 MR. BOLDT: No, your Honor. I think
24 that was a misstatement, and thank you for raising it.

1 For the record, we have not filed. I believe that was a
2 misstatement. That it was that PSNH and Laidlaw had filed
3 various objections to interventions. I do note that they
4 have not, to my knowledge, filed an objection to the
5 City's intervention.

6 CHAIRMAN GETZ: All right. Thank you.

7 MR. BOLDT: Thank you very much.

8 CHAIRMAN GETZ: Mr. Edwards.

9 MR. EDWARDS: Edrest Properties owns
10 and/or leases and also manages properties, serviced by
11 PSNH, total of approximately 170 units in Berlin. As
12 owners, we share a concern for increased rates as a result
13 of PSNH's refusal to participate in competitive bidding.
14 We're also concern about value decline in Coos County
15 leading to tax revenue loss, where towns are hosting small
16 biomass facilities, and their closure could result in
17 excessive loss of tax revenue to the county in general.

18 Competitive bidding that is not taking
19 place is a real concern of ours. As an example, Clean
20 Power has offered PSNH a cost 5 percent below Laidlaw's
21 offer, without even knowing exactly what Laidlaw's offer
22 amount is.

23 In terms of confidentiality, we really
24 feel, as ratepayers, we've been largely in the dark as to

1 the cost that will impact ratepayers in the future with
2 this entire Site Evaluation Committee proceeding. And, we
3 feel that the absence of knowing what rate increases may
4 exist as a result of this is the very reason why a lot of
5 ratepayers are not coming forward at this point in time.
6 We really feel that the absence of competitive bidding
7 leads to higher costs. The absence of PPAs leads to host
8 town hardships. I spoke with Bethlehem's Tax Collector
9 the other day, and that town right now, as a result of
10 Pinetree Power not having a power purchase agreement, is
11 suffering a significant loss due to revenue from that
12 plant. And, I just feel that it's very, very important
13 for there to be competitive bidding, so that these plants
14 can still support and be a large supporter to the host
15 towns that they're located in.

16 I'm going to give you an example of a
17 typical situation, actually, in Berlin. Where you have a
18 four-room apartment with electric heat, costing 250 a
19 month, and you have a woman with a disability income of
20 about 620 a month. So, it's leaving on rent in the amount
21 of 400 a month, and she has nothing left outside of that.

22 I'd like to voice a concern over the New
23 Hampshire labor union. I think it would be interesting
24 for the PUC to also look into the fact that a lot of these

1 jobs that will be generated with this are specialty jobs.
2 And, I question as to how many of the North Country people
3 will actually be employed as a result of this -- these
4 having to be specialty workers.

5 For the record, I would like to make it
6 known that, personally, I was granted intervenor status in
7 the 09-06 [09-067?] docket, the Clean Power complaint
8 against PSNH. And, many of the concerns that I cited
9 there are the same concerns that I'm citing right now.

10 In closing, I really feel that, if it's
11 -- if it's New Hampshire's job to get 25 percent of the
12 energy from alternative energy by the year 2025, if it's
13 at the expense of existing plants, doesn't that contradict
14 the goal in and of itself? I think, to some degree, it
15 does. And, I sincerely hope that the PUC takes that into
16 consideration. Thank you.

17 CHAIRMAN GETZ: Okay. One question,
18 Mr. Edwards. Looking at your Petition to Intervene, it
19 seems the primary basis of your petition, as Edrest
20 Properties, is that it owns properties with electric heat
21 and services that can be affected by rate increases. And,
22 in its objection, PSNH asserts that "Edrest was just
23 formed on August 23rd", that they appear to have searched
24 the Registry of Deeds and found "no ownership of real

1 property" interests. And, I guess it looks like they have
2 checked their own records and find "no record that Edrest
3 Property is a retail customer". Can you address those
4 issues please?

5 MR. EDWARDS: Yes. Yes, I can. Edrest
6 was a newly formed LLC. So, we haven't transferred all of
7 those accounts yet. Those are still personally under
8 "Jonathan Edwards". So, Edrest was very recently formed,
9 within the past two weeks.

10 CHAIRMAN GETZ: Okay. So, what your
11 intention is, is that these properties are owned by you,
12 you pay these rates individually, and you're planning to
13 --

14 MR. EDWARDS: We're transferring --

15 CHAIRMAN GETZ: -- transfer the
16 ownerships to this new LLC?

17 MR. EDWARDS: We're transferring -- the
18 ones that we actually own, we'll be transferring the
19 service over to Edrest. However, we manage properties for
20 other owners, and we manage for tenants, that are also
21 part of this concern.

22 CHAIRMAN GETZ: Okay. All right. Thank
23 you. Ms. Hatfield.

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

1 The OCA does not have a position at this time on the PPA.
2 We are still reviewing the filing, and we intend to
3 undertake the discovery in cooperation with the parties in
4 the case. There are several key areas, many of which have
5 been discussed, that we'll be reviewing closely. One is
6 the proposed pricing as it compares to market rates; the
7 Wood Price Adjustment, and the potential impact on the
8 cost of the PPA; and also the purchase option, with an
9 overall focus on whether there are sufficient benefits and
10 protections for residential customers in the PPA.

11 With respect to the request for an
12 expedited process, like many other parties, we don't
13 object to that in concept. But, if one does the math
14 quickly, it looks like the Commission would need to issue
15 a final order potentially in October or November. We
16 think that's extremely quick, but we will do what we can
17 to cooperate on that issue.

18 With respect to the Motion for
19 Confidential Treatment, we do not have a position. We
20 would like to note our appreciation for how PSNH redacted
21 Mr. Labrecque's testimony. It looks to us like they took
22 great care in just trying to redact the specific pricing
23 information, and we do appreciate that. We will note, as
24 has been raised, that this case raises particular

1 challenges for the Commission and for the parties who are
2 entitled to the confidential information, because that
3 information goes to the heart of the questions in this
4 case. And, for those who have stated positions in favor
5 of the PPA, but who do not have access to that
6 information, it certainly raises a challenge for them as
7 well.

8 We have no objection to any of the
9 intervention requests. And, I did want to raise one
10 process issue, which is that it appears that the service
11 list on the Commission's website is not correct. As you
12 noted, the OCA filed our letter of participation on
13 August 3rd, and we are not receiving filings. So, I just
14 wanted to raise that to the Commission's attention. Thank
15 you.

16 CHAIRMAN GETZ: Okay. Thank you. Ms.
17 Amidon.

18 MS. AMIDON: Thank you. Staff has not
19 yet commenced discovery, but intends to examine the PPA
20 according to the criteria in RSA 362-F:9, which governs
21 the Commission review of proposed long-term contracts for
22 the purchase of RECs and energy, and requires the
23 balancing of those considerations to determine whether the
24 long-term PPA is in the public interest. Once we have

1 completed the review, we'll be making a recommendation to
2 the Commission.

3 I'm mindful of some parties' interest in
4 expediting this process. I wish to remind the Commission
5 that, in the Lempster docket, which is DE 08-077, where
6 PSNH sought approval of a long-term purchase power
7 agreement with Lempster, the proceeding took 12 months
8 from filing to order. We will propose a much more
9 ambitious schedule for this proceeding. But, at this
10 point, reviewing what we think we need, in terms of
11 discovery, we don't contemplate a hearing before the end
12 of February 2011. And, we would just want to put that out
13 there for the Commission's information at this point.

14 The Staff supports the Motions to
15 Intervene by the biomass plants; that's CPD, the Concord
16 Steam, and the IPPs. Our view of this is, had PSNH used a
17 competitive bid process, some of these parties would have
18 been able to participate in the solicitation. But the
19 process that PSNH used excluded them. Just because they
20 couldn't compete for a purchase power contract, doesn't
21 mean they should be excluded from participation in this
22 docket. Especially since, in Staff's view, they have
23 information which would shed light on whether or not the
24 terms and conditions and the pricing terms of the

1 contracts are reasonable and, therefore, in the public
2 interest.

3 So, if the Commission does not find that
4 the biomass plants have a right, duty, privilege or
5 interest which gives them a direct interest in this
6 proceeding, we believe the Commission could grant these
7 interventions in the interest of justice, as it would
8 assist the Staff in its work reviewing the docket.

9 With respect to the remainder of the
10 Petitions to Intervene, we have no position. And,
11 regarding the Motion for Confidential Treatment, we don't
12 have a position on that at this time.

13 CHAIRMAN GETZ: Thank you.

14 (Chairman and Commissioners conferring.)

15 CHAIRMAN GETZ: Okay. Let's turn to
16 Laidlaw, and an opportunity to explain their objections to
17 the Petitions to Intervene, because we haven't seen that
18 filing yet.

19 MR. SERELL: Thank you. If you have
20 seen the PSNH filing, our position is largely consistent
21 with the PSNH objections to those. I'll just touch
22 briefly on our bases for our objections.

23 First, in our view, the easiest one are
24 the -- to the extent people base their position on a

1 potential impact on rates, as we understand it, that the
2 Edrest enterprises and the wood-fired plants contend that
3 this might ultimately have an impact on their rates, we
4 believe that the case law cited in our objection and in
5 the PSNH objection makes clear that no ratepayer has
6 standing to involve themselves in a matter unless and
7 until this Commission has commenced a "ratemaking"
8 proceeding. And, because this is not a ratemaking
9 proceeding, this falls under the same category as the
10 Stonyfield case, and a simple impact on rates does not
11 infer standing on either Edrest or the wood-fired plants.

12 CHAIRMAN GETZ: But, Mr. Serell, is
13 there, I think Mr. Rodier raised this argument, is there a
14 distinction between standing on appeal versus an affected
15 interest that would allow intervention below?

16 MR. SERELL: We don't believe there is.
17 I mean, yes, technically, if you look at the wording of
18 the "standing" statute for purposes of this Commission and
19 "standing" statute for purposes of appeal, there's a light
20 wording difference. And, the issue of whether ratepayers
21 get to have standing to appear before this Commission
22 never gets to the Supreme Court, it just doesn't get
23 there. So, we don't have a clear word from the Supreme
24 Court on that. But, certainly, the reasoning that is set

1 forth in *Stonyfield* and related cases we believe applies
2 equally to appearances by ratepayers before this
3 Commission. It's the same issue. And, the fact that the
4 standing -- the standard for standing is slightly
5 different, it doesn't dictate a difference result.
6 Ratepayers simply should not have the ability to come in
7 before this Commission and complain about potential
8 impacts of bilateral agreements on rates, unless and until
9 the ratemaking proceeding is commenced. The other --

10 CHAIRMAN GETZ: I'm sorry. So, you
11 would draw a distinction between "rate cases", where rates
12 are being potentially increased, versus a case where some
13 other action is being taken that may some day lead to a
14 rate increase?

15 MR. SERELL: Right. And, that's the
16 exact distinction that the Supreme Court has drawn in
17 *Appeal of Ratepayers* and *Stonyfield Farm*. That both us
18 and I believe PSNH have cited in our objections, and that
19 is the bright line that they have drawn.

20 CHAIRMAN GETZ: But that -- of course,
21 that goes to the issue of --

22 MR. SERELL: Standing on appeal.

23 CHAIRMAN GETZ: Well, but I mean, in
24 terms of granting intervention as a matter of right versus

1 intervention as a matter of discretion.

2 MR. SERELL: Well, I mean, yes,
3 technically, you're right. Although, I think, in our
4 view, the same consideration should underlie this
5 Commission's consideration whether to grant standing by
6 discretion as well. I mean, otherwise, ratepayers would
7 have standing to appear in any matter before this
8 Commission just about, it seems to me.

9 With respect to the arguments or the
10 general challenges to PSNH's procurement practices, the
11 issue before this Commission is whether this Power
12 Purchase Agreement is consistent with the provisions of
13 RSA 362-F:9. There's, as this Commission knows, there is
14 another docket dedicated to the issue of PSNH procurement
15 practices generally. And, in our view, those issues
16 should be addressed in that docket. This docket should
17 not be expanded to address those issues generally. And,
18 the fact that these other plants compete in the wholesale
19 energy market can't be a basis for standing. Because, if
20 that were the case, any time that any entity appeared
21 before any state agency requesting any approval of any
22 kind, then competitors in that industry would have
23 standing to come in and contest that. And, that's not the
24 law of standing, and we submit that should not be the law

1 of standing. The mere fact that they operate in the same
2 industry doesn't give the wood-fired plants or the other
3 individuals relying on that basis a basis to intervene.
4 They have to allege that the issues being addressed by
5 this Commission under 362-F:9 are specific to those
6 entities, and we contend that they are not.

7 CMSR. IGNATIUS: Mr. Serell, they have
8 alleged this morning and in their pleadings that they will
9 be directly impacted financially as a result of the PPA.
10 That doesn't constitute information that you think
11 qualifies?

12 MR. SERELL: Well, the only -- the only
13 thing I've heard regarding a potential financial impact is
14 their allegations regarding the price of wood.
15 Essentially saying that, "if this is approved, this is a
16 big demand for wood, and, therefore, the price of wood
17 that we have to pay may go up." That's the only one that
18 I've heard. With respect to that argument, our position
19 is that that issue, and you know better than I, was
20 addressed by the SEC. I mean, the SEC addressed the
21 issues of how this was going to -- this whole wood basket
22 issue and how, you know, this project was going to
23 potentially impact demand for wood. In our view, those
24 were issues that have been addressed, and this Commission

1 can take notice of those proceedings and the testimony in
2 those proceedings, but that that doesn't provide a
3 separate basis for these individuals to come in and raise
4 the same issues before this Commission.

5 In general, in our view, the general
6 impacts on the commodity market, in general, don't provide
7 a basis for standing. And, again, if I can use an
8 analogy, I mean, these people aren't the only ones that
9 use wood in this state. I mean, there's thousands,
10 hundreds of thousands of people that use wood, tens of
11 thousands of households that burn wood for heat. If their
12 argument were correct, then each one of those would have
13 standing to come in and complain that this might impact
14 the price of wood.

15 And, just to go further, there's really
16 nothing in any of their petitions that provide any basis
17 for their allegation that this is going to negatively
18 impact them. They stand up and say that, but there's
19 nothing attached to their position. There's certainly no
20 -- no affidavit by anyone involved in their business or
21 any expert or anyone else saying, you know, "this is what
22 is going to happen to the price of wood if this PPA is
23 approved." So, they haven't even really made a showing,
24 they have made a bold allegation. And, you know, even if

1 they had made a showing, it doesn't give them standing,
2 because the same argument would apply to every user of
3 wood throughout the state.

4 And, I don't know, Attorney Needleman, I
5 don't know if you want to add anything about the SEC
6 matter, because you were involved in that. But I know
7 Commissioner Ignatius was intimately familiar with that,
8 so...

9 So, essentially, that's our position on
10 standing. We do not believe that the entities, which have
11 sought standing, with the exception of the City of Berlin,
12 who correctly notes that we do not take any position on
13 their request, but, with respect to the remaining
14 petitioners, it's certainly our position that they do not
15 have standing for those reasons.

16 I don't know if you want me to address
17 our petition for standing, but I think that was pretty
18 straightforward. We are the other party to the PPA, and,
19 for that reason, we certainly contend that we have a
20 direct impact. Happy to answer any other questions?

21 CHAIRMAN GETZ: I think we're all set.
22 Thank you. Mr. Bersak, we have your objection. But, as
23 the Applicant, we'll give you the opportunity to go last,
24 to address any of the issues that have been raised this

1 morning. And, after you've completed your remarks, we'll
2 turn to comments from the public.

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

4 With respect to the issue of scheduling, there was a
5 concern raised about "it took us two years to negotiate an
6 agreement and now we need a decision quickly." Public
7 Service was very diligent in trying to come up with a
8 Purchase Power Agreement that would be good for customers,
9 that would meet the RPS requirements, that would protect
10 customers, that would meet all the standards set forth in
11 RSA 362-F:9. We were not in a hurry to get something just
12 to have something done, we wanted it done right. The need
13 for time now is being driven by the tax incentives and
14 other federal programs that were enacted on a hurried
15 basis because of this present economic situation we find
16 ourselves in. Those are real. We support the need to
17 move forward quickly. But those weren't on the table when
18 we first started negotiating this. They are there now,
19 they are realities, we have to deal with the economic
20 situation that the state and especially the North Country
21 finds itself. So, we would very much appreciate the --
22 whatever efforts can be made to -- for the Commission to
23 review this proposal very quickly.

24 What's really on the table with respect

1 to the intervention requests, by and large, is whether
2 competitive generators will be able to make as much money
3 in the future if this plant gets built. That's really
4 what's on the table here for everybody, with the exception
5 of Mr. Edwards, Edrest Properties, LLC. Every other
6 intervenor -- and the City of Berlin, of course. Every
7 other intervenor here is basically saying "if Laidlaw goes
8 forward, we can't make as much money." We contend, at
9 Public Service, that the public interest that RSA 362-F:9
10 is looking at is the public in general, not the owners of
11 merchant plants that want to make more money than they
12 will otherwise.

13 Public Service serves, on a distribution
14 basis, about 70 percent of the state. Our Energy Service
15 provides about 70 percent of the needs of those customers.
16 So, roughly half of every electric customer, half the
17 citizens of this state take Energy Service from us.
18 That's the public whose interests we're trying to protect.

19 Perhaps it's the Supreme Court, you
20 know, that really dealt with this issue the best, and
21 we've quoted and cite in our objection. Which we filed
22 yesterday to try to get to you in a timely manner, I'm not
23 going to read the whole objections there. And, obviously,
24 Mr. Chairman, you and the Commissioners have had an

1 opportunity to look at it.

2 But the Supreme Court has said "injury
3 resulting from competition is rarely clarified as a "legal
4 harm", but rather is deemed a natural risk in our free
5 enterprise economy." That's what's at issue here. It's
6 not a legal harm. These plants will do and apparently say
7 anything to stop the Laidlaw project from going forward.

8 With respect to Clean Power Development,
9 if you look at their intervention, it doesn't say
10 anything. It says "We develop plants. We filed a
11 complaint. Therefore, we have standing." That does not
12 meet the standards of RSA 541-A:32. It does not meet what
13 the order of notice said with respect to showing a
14 demonstration of how rights, duties, privileges,
15 immunities or other substantial interests may be affected.
16 That is just patently deficient on its face, and Clean
17 Power Development has not shown any interest in this
18 docket, they should not be allowed to intervene.

19 The wood IPPs come in here today
20 complaining about "fuel wood clause adjustment". They do
21 admit that two of the wood IPPs that are here today,
22 Pinetree and Pinetree-Tamworth, in fact, have such wood
23 adjustment clauses in contracts that are in place today.
24 That's kind of coming here a little bit pregnant. It's

1 okay for them to have it, it's okay for them to have a
2 bilateral contract, but we're different; that's not true.

3 With respect to confidentiality, these
4 same wood plants that are here today have for years
5 resisted and fought this Commission's efforts to try to
6 get information from them with respect to how their rate
7 orders impacted the customers of this state. If I recall
8 correctly, they actually -- they even went to federal
9 court to block this Commission from getting information
10 from them. Yet, they have the audacity to come in here
11 today and say "oh, we need the information, or we can't
12 play in this proceeding."

13 They also say that "well, OCA shouldn't
14 be allowed to be here, if it's a matter of customers
15 having a competitive choice." We all know small
16 customers, small commercial/residential customers, have no
17 viable competitive suppliers to choose from. These wood
18 plants do. If they exercise a choice to buy default
19 energy service from Public Service of New Hampshire, we
20 welcome that. But they have the choice not to do that.
21 They're a big player. They can go elsewhere. Voluntarily
22 submitting yourself to what they deem to be a potential
23 harm in the future does not raise the standard of harm
24 necessary to grant them intervenor status.

1 The New England Power Generators
2 Association came here and said that "this docket should be
3 put on hold until another docket gets done, DE 10-160,
4 where the procurement process that PSNH uses is being
5 investigated by the Commission." Whatever happens in that
6 docket happens. But it shouldn't have a retroactive
7 effect to say "we're going to stop everything and make you
8 redo things that were done in the past, consistent with
9 every other RSA 362-F agreement that we've done to date."

10 And, finally, with respect to one of the
11 comments that Mr. Edwards said, after his discussion with
12 the Bethlehem Tax Collector, he said that the -- I just
13 want to clarify, that the agreement with the two Pinetree
14 plants are in existence, they continue in existence
15 through the end of this year. So, they do have agreements
16 that are in place as of now. What happens after that is a
17 matter for the competitive market.

18 Thank you for your attention and
19 appreciate the opportunity to address you.

20 CMSR. IGNATIUS: Mr. Bersak, a question
21 about confidentiality. In the PPA, much of it is public,
22 but there are a couple of pages heavily redacted, which is
23 really the heart of the pricing/financial aspects of it,
24 Pages 9 and 10 in particular. How do we demonstrate that

1 the PPA is in the public interest, if we can't identify
2 what the prices and the financial terms are?

3 MR. BERSAK: I think that's something
4 that the Commission has traditionally done, especially in
5 this post restructuring world. We're in a competitive
6 world. And, as I mentioned earlier, in the two Pinetree
7 agreements, as well as in Lempster, which were the other
8 renewable power portfolio agreements that were brought to
9 the Commission, the same type of information was treated
10 in a confidential manner. We treat confidentially, in our
11 Energy Service rate proceedings, fuel prices and other
12 confidential information that could distort or impede our
13 ability to get good pricing out in the competitive market.

14 It is a rough -- it is something
15 difficult to do. But I certainly contest what the
16 competitive plants say here today is that the -- "our
17 intent is to keep this information from the public, but
18 it's okay to give it to the competitors." I think they
19 have it a little bit backasswards there. You know, if we
20 could give it to the public without impacting the
21 commercial market, we would give it to them. Because it
22 is the plants and the wannabe intervenors here today,
23 those are the ones who should not have the information.
24 They are the competitors. You know, its -- I think it's

1 really backwards the way that they're planning it. And,
2 this is a difficult situation. To the extent that a
3 intervenor is not a competitor, such as the City of Berlin
4 or Edrest Properties, if they're allowed intervenor
5 status, and if they're willing to enter into a standard
6 confidentiality agreement, I would say that we would not
7 have a difficult time giving them the information. We've
8 done that with the Office of Consumer Advocate. They have
9 the confidential information, subject to a confidentiality
10 agreement. But, to say that "we're going to give it to
11 the competitors, but they will hold it confidentially",
12 well, that defeats the whole purpose of having it
13 confidential in the first place.

14 CMSR. IGNATIUS: Thank you.

15 CMSR. BELOW: Just to be clear, Mr.
16 Bersak. Is it fair to say that the amount of RECs that
17 are proposed to be purchased under this PPA, as well as
18 the energy for the duration of it, is substantially larger
19 than the previous PPAs that we've considered?

20 MR. BERSAK: Yes.

21 CMSR. BELOW: Okay. And, that's fine.
22 Thanks.

23 CHAIRMAN GETZ: All right. At this
24 point, let's provide an opportunity for the comment from

1 the public. Is there anyone here that would like to make
2 a statement?

3 Please come forward. And, if you could
4 just state your name, and spell your name, in case it's a
5 difficult one, for Mr. Patnaude to place in the
6 transcript.

7 MR. MAKAITIS: I will definitely do
8 that. Thank you. My name is Max, it's Makaitis,
9 M-a-k-a-i-t-i-s, and I'm the Androscoggin Valley Economic
10 Development Director, and representing AVER, which is the
11 Androscoggin Valley Economic Recovery Corporation. It's a
12 private 501(c)(3) entity, nonprofit, that is devoted to
13 creating economic development in the Androscoggin Valley,
14 which includes the City of Berlin. And, we have a number
15 of projects. And, our primary objective is always
16 attempting to create jobs and to retain jobs up in the
17 North Country. And, I think this project falls directly
18 into that realm, from an economic perspective.

19 I think, economically, it's obvious that
20 we have a free market, just by looking around at the
21 distinguished competitors here and the representatives of
22 competitors, that there's a free market going on in the
23 wood products industry. That, obviously, the price of
24 wood has gone up and down, has gone up and down before

1 Laidlaw came in, it has gone up and down before the
2 biomass, just because of the economy, depending upon the
3 construction industry, it depends on a number of
4 industries. And, the biomass is sometimes a byproduct of
5 other wood that's being taken, and also that it's a -- can
6 be harvested directly. And, it's harvested directly
7 sometimes in order to maintain an efficient forest, so
8 that the good trees can grow, and we can utilize what's
9 called "trash trees" and "trash wood".

10 So, there are a number of economic
11 factors involved here, but they all revolve around supply
12 and demand, which is the basis of the free market. And, I
13 think that, from a demand perspective, the price of wood,
14 we don't know where it's going to go. This could have an
15 effect, and it could increase price. But, as was pointed
16 out, from an economic perspective, all industries
17 encounter the same situation. And, yes, some who can't
18 efficiently utilize that wood, who can't convert that wood
19 profitably into a profit for their entity, cease to exist.
20 And, I don't think anything is different in this industry
21 than in any other industry that possibly we will have
22 entities, and we don't know if that entity -- which entity
23 that may be. We don't even know if that might be Laidlaw.
24 We just know that there's a free market, and it's a

1 competitive market, and that price will go up and down
2 with supply and demand.

3 As far as the good, the public good, I'd
4 like to emphasize that AVER supports all of these biomass
5 entities. Because biomass, as a renewable energy source,
6 provides the number one maximum economic impact in our
7 economy. When you take coal and you pay for coal, and the
8 money is exported, and you burn the coal, there's nothing
9 left. New Hampshire has gotten poorer, the people have
10 gotten poorer, we don't have anything to show for it; same
11 with oil.

12 However, the raw material in biomass is
13 purchased locally. The money doesn't go from us to some
14 other entity exported. It stays in New Hampshire. It
15 stays in Coos County. Because \$25 million of wood or
16 whatever wood all of these entities purchase, you know,
17 they treat the wood as a commodity, but, really, the wood
18 is people. The wood is forest service workers. There are
19 people that are up there that need a job. They're under
20 employed and they're unemployed. And, if they get more
21 money for their wood, and the landowners get more money
22 for their wood, that's not a problem for New Hampshire.
23 That's a good thing for them, because the number of jobs
24 in the wood services industry is in the hundreds.

1 So, as far as affecting the good, the
2 public good, that price is not necessarily an issue for
3 the suppliers of the wood. And, there's more jobs related
4 to supplying the wood than there are in the energy plants.

5 So, economically speaking, everyone
6 who's efficient enough, everyone who can create that
7 efficiency necessarily will survive and will profit. And,
8 we're only just talking about relative profitability if
9 the wood products changes or goes up and down.

10 So, that AVER supports all of these
11 biomass, but, most importantly, it supports, in this
12 particular hearing, because we're discussing Laidlaw, we
13 are supporting, fully supporting the Laidlaw project.
14 And, we would ask if you could please do a timely,
15 expedited process, because we know that there are 400 and
16 potentially 70 construction jobs that could be created
17 immediately from this project. There are federal tax
18 benefits that are currently available, which will benefit
19 New Hampshire, if we take advantage of them, and so that
20 those benefits could be realized on a timely basis. Yes,
21 it can be delayed, it can be probably done next year. But
22 all we're doing is forestalling the economic need -- the
23 economic benefit.

24 I do know that 250 people have lost

1 their jobs up there as of today, and that those people
2 will need a job. And, I know that we can debate what the
3 price of electricity will be, and how much it will affect
4 each individual customer, and whether someone may have to
5 pay more or less, but alternative energy is a necessary
6 direction that New Hampshire has to go in. And, that the
7 price that people can pay for electricity is only possible
8 if they have a job. And, the issue here is creation of
9 green energy jobs that will stay in the state, that will
10 build on the future of our alternative energy. And, Coos
11 County is -- provides over 50 percent of alternative
12 energy from New Hampshire right now. And, this project is
13 consistent with the development of that alternative
14 energy.

15 As far as plants with the energy
16 credits, it is true that PSNH is required to buy both
17 Class III and Class I. Class III, some of these plants
18 can sell Class III, Laidlaw will be selling Class I.

19 So that, overall, we support the timely
20 expedited conclusion to this process, because the worse
21 thing that a private industry -- a free market has to
22 endure is not having an answer. If you answer "yes",
23 that's fine; if you answer "no", they go do something
24 else. If you answer "yes" conditionally, that's fine,

1 just like the Site Evaluation did. But not having an
2 answer is probably the worse dilemma for all of the
3 entities that have to put together the financing and put
4 together a definite industry that is going to build wealth
5 in New Hampshire, Coos County, as opposed to other
6 entities. Thank you.

7 CHAIRMAN GETZ: Thank you.

8 MR. BRADY: My name is Tom Brady, Coos
9 County Commissioner, representing the Coos County
10 Commissioners. It's important to note today that two out
11 of three Commissioners are here in the room, and the third
12 would have been here also, however, he's not exactly
13 feeling well enough to travel all the way down from
14 Pittsburg.

15 I'm not going to go over everything that
16 everybody has already mentioned, but it's vitally
17 important to the future of Coos County and to our economy
18 that we're trying to rebuild. Everybody knows how much
19 everybody has been suffering the past few years, but it's
20 especially hit us in our economy -- in our neck of the
21 woods and in our economy in Coos County.

22 Laidlaw has worked with three community
23 economic development entities, including the New Hampshire
24 Business Finance Authority, to secure the New Market Tax

1 Credits. To qualify, Laidlaw has agreed to use a portion
2 of the credits to capitalize a \$2.25 million small and
3 medium enterprise revolving fund, which will provide
4 access to capital for local business. \$250,000 of this
5 fund can be earmarked as grants for jobs, equipment,
6 safety, and responsible forestry practices and training.

7 As part of the New Market Tax Credit
8 agreement, Laidlaw has made a commitment to establish a
9 \$500,000 fund that will be directed by BFA for use in
10 Berlin community projects. Laidlaw will work with the
11 community development entities to create an industrial and
12 community plan for the portions of the 62 acre site that
13 will not be used by the plant. A lengthy PUC review
14 process of the Laidlaw/PSNH agreement will not kill the
15 project, but it will directly -- it will direct -- I'm
16 sorry, it will limit the direct economic benefit to Berlin
17 and Coos County.

18 The Laidlaw project is truly "shovel
19 ready", and construction will start almost immediately,
20 once PUC approval of the PPA is made. The Laidlaw project
21 will not preclude development of other projects in the
22 area, as the wood basket analysis demonstrates that there
23 is sufficient wood supply to support multiple projects.

24 PUC timely action is crucial to getting

1 this project started in time to get immediate economic
2 help for the North Country, as well as long-term economic
3 benefits. Thank you.

4 CHAIRMAN GETZ: Thank you, Mr. Brady.
5 Is there anyone else?

6 MR. CASEY: Thank you for the
7 opportunity to speak today. My name is Joe Casey. I'm
8 the President of the New Hampshire Building and
9 Construction Trades Council. And, I represent
10 approximately 5,000 working men and woman here in the
11 State of New Hampshire. New Hampshire Building and
12 Construction Trades Council supports the proposed Purchase
13 Power Agreement between Public Service of New Hampshire
14 and Laidlaw, and we urge the Public Utilities Commission
15 to approve it.

16 As everyone in this room knows, these
17 are not good times for families that depend on
18 construction for their livelihood. While the entire
19 economy is struggling, the impacts on the construction
20 industry have been particularly hard, and this project has
21 come at a critical time for many New Hampshire workers.
22 Your timely approval of this agreement is a critical step
23 in moving -- moving this project forward, and creating the
24 hundreds of construction jobs necessary to complete the

1 project.

2 Laidlaw and Public Service of New
3 Hampshire have worked hard to bring forward an agreement
4 that provides security to New Hampshire electrical
5 customers, and addresses the state's mandate for the
6 purchase of renewable energy. Your approval of this
7 agreement will be an acknowledgment of Public Service of
8 New Hampshire's effort to support an in-state renewable
9 energy project through this Purchase Power Agreement, and
10 helping facilitate the many economic benefits,
11 specifically, New Hampshire jobs associated with this
12 project.

13 I recognize that your job is to ensure
14 that the electrical customers are protected. But you have
15 to also be in a position of determining the fate of
16 hundreds of jobs in northern New Hampshire. I simply ask
17 that you put yourself in a position of thousands of
18 working families that I represent here today and consider
19 the impacts on them while you make your decision.

20 And, I also -- I just want to address
21 Mr. Edwards' concern with the "specialty work" that would
22 be involved, and the importing of jobs to fill those, and
23 not employing the people from the North Country. The
24 Suffolk Construction recently had an article in the

1 Manchester Union Leader, an advertisement. Where they
2 showed the cities and towns and the employees' names that
3 worked on the recent hospital project in the City of
4 Manchester. And, quite interestingly enough, the second
5 city with the most employees was from Berlin. And, this
6 was a construction job in Manchester. When Burgess --
7 when the Burgess Mill was running years ago, many of the
8 workers at the plant, they worked in the construction
9 industry, they were boilermakers and laborers and
10 carpenters and millwrights. A lot of the residents from
11 the City of Berlin and neighboring Gorham worked for
12 outside contractors, that their whole livelihood was based
13 on the operation of the paper mill. The construction
14 industry is well represented in the North Country, believe
15 me.

16 In 2001, when Burgess went down, then
17 Governor Jeanne Shaheen contacted my office, and we
18 immediately were able to put a lot of these people to work
19 as we were doing the construction of the two gas burners,
20 the one in Londonderry and the one in Newington. These
21 people are still members and still belong to our unions.
22 And, unfortunately, they're not able to work at home.
23 They work all throughout the state or wherever we can put
24 them.

1 On the positive note, you know, the New
2 Hampshire Building Trades, it is our policy to put local
3 people to work. Unlike the Berlin Prison job, which was a
4 federal job up in Berlin, the last construction project
5 they had, where they relied on the contractors or the
6 general contractor or the project manager to award the
7 contracts and employ the people. Through the Freedom of
8 Information Act, we pulled payroll, we got the addresses
9 of a lot of the employees on that project, and most of
10 them came from out-of-state, because they demanded less
11 benefits and wages. And, it was, in my opinion, that it
12 was quite shameful that you had -- we had people up there
13 from Alabama and Tennessee and Texas and New York, and all
14 over the country, when we had people right in Berlin that
15 were looking to go to work.

16 Laidlaw has entered an agreement with
17 the New Hampshire Building Trades, and they understand the
18 importance of putting local people to work locally. On a
19 good note is, there are a lot of young people up in
20 Berlin, and we'd like to keep them up there. We all have
21 comprehensive apprenticeship training programs, which we
22 would like to get these kids in, so they can start
23 learning trades and they can start building for their
24 future. And, that's what it's all about.

1 And, when the North Country starts to
2 come around and it starts to build, build back up, which
3 we know they will, because they're resilient people up
4 there, then we're going to have a workforce that can do
5 this, do this type of work, and these people are going to
6 have opportunities for jobs that pay good wages and
7 benefits. And, that's what it's all about. And, the New
8 Hampshire Building Trades is ready to work with Laidlaw
9 and the officials from the City of Berlin, to make sure
10 that everyone up there has an opportunity to work on the
11 construction, on this construction project.

12 And, with that, I thank you very much.

13 CHAIRMAN GETZ: Thank you. Sir.

14 MAYOR GRENIER: Mr. Chairman, members of
15 the Commission, my name is Paul Grenier. I am the Mayor
16 of Berlin. And, I have a couple of small comments, and I
17 have a letter that I'd like to read into the record
18 stating the official City of Berlin's position.

19 My offhand comments, I've sat in this
20 proceeding listening to a lot of the comments from the
21 intervenors who are opposed to the issuance of this PPA
22 for this project. And, they all cite, you know,
23 "competition" and they all cite "free market". Well, I've
24 got this news release from Fraser Papers yesterday that

1 says "Fraser Papers Terminates Agreement to sell [their]
2 New Hampshire Paper Mill." When I graduated from high
3 school in 1973, there was 3,000 employees in that Fraser
4 Paper Mill, there was 1,200 employs at the Converse rubber
5 plant that made Chuck Taylor All Star sneakers. Remember
6 those? Today, as of August 13th, there will be zero of
7 those jobs. And, that's one generation, from 1973 to
8 2010. That's what the free market has done to the City of
9 Berlin.

10 So, when we talk about the "free
11 market", let's be cognizant of the fact, when you're
12 talking about "free market forces", we've been truly the
13 victim of free market forces. And, we're not laying down
14 playing victim, we're trying to rebuild our economy the
15 best that we can.

16 My official letter, Mr. Chairman: "Dear
17 New Hampshire Public Utilities Commission: This letter is
18 written on behalf of the Mayor and City Council of the
19 City of Berlin. At their meeting on Monday, September 27,
20 2010, in a 5 to 3 vote, the Mayor and Council voted to
21 provide you with this letter in support of Public Service
22 Company of New Hampshire's Petition to the PUC for
23 Approval of a Power Purchase Agreement between PSNH and
24 Laidlaw Berlin BioPower, and urge the expedited

1 consideration of its petition.

2 The City of Berlin is by far the most
3 economically distressed city in the state. It desperately
4 needs the enterprise, jobs and tax base that the proposed
5 Laidlaw energy development project will bring to the
6 community. In order to take advantage of close to
7 \$3 million in local community benefits from the New Market
8 Tax Credits which have been allocated to the project,
9 final financing must be closed by November 15th, 2010.
10 This financing cannot close without a Purchase Power
11 Agreement.

12 As the Commission is aware, Laidlaw has
13 just completed a rigorous nine month process before the
14 Site Evaluation Committee. This project is now ready to
15 begin construction. The City fully expects that the PUC
16 will carry out its review process with proper due
17 diligence. The City also respectfully requests that the
18 PUC do everything in its power to streamline that review
19 to make it as rapid as reasonably possible. The PUC's
20 judicious and timely review of this petition is greatly
21 appreciated."

22 Thank you very much. And, I have
23 brought copies of the letter and the news release to all
24 three of you folks. I can --

1 CHAIRMAN GETZ: If you could just give
2 it to counsel, please.

3 MAYOR GRENIER: Okay.

4 MS. AMIDON: Thank you. We'll make sure
5 it gets into the file.

6 MAYOR GRENIER: Thank you very much.

7 CHAIRMAN GETZ: Thank you, Mr. Mayor.

8 Is there anyone else who would like to make a public
9 comment this morning?

10 (No verbal response)

11 (Chairman and Commissioners conferring.)

12 CHAIRMAN GETZ: Let me try to address
13 some of these procedural issues, and essentially start
14 with this question with respect to Petitions to Intervene.
15 And, I guess it goes to the issue of, we want to give due
16 consideration to the petitions and the objections, but we
17 also would like to move ahead with the technical session,
18 if possible. Is there -- would it be possible, in the
19 parties' minds, to move ahead with a technical session,
20 try to come up with a procedural schedule, without us
21 having, in advance, rendered a decision on the Petitions
22 to Intervene? Or, do the parties think that it's really a
23 necessary prerequisite for the technical session, is that
24 we have made a decision on the Petitions to Intervene?

1 And, also, let me just add this caveat
2 that I often make with respect to -- prior to any
3 technical sessions. More often than not, there are
4 agreements among the parties as to issues like scope and
5 procedural schedule. Sometimes there are -- there isn't
6 an agreement, and then we get a report by, usually, by
7 Staff, either that "there is agreement" or that "there's
8 not agreement, and these are the differences."

9 So, let me just throw that out there on
10 the basic question of whether you think it's necessary for
11 us to make a decision on interventions before the
12 technical session? And, we can start with you,
13 Mr. Bersak, and just go around the room.

14 MR. BERSAK: We are certainly willing to
15 go move forward with the technical session and try to
16 develop a procedural schedule. Probably, if anything, if
17 any of the or all of the intervention requests that we've
18 objected to were denied intervenor status, the schedule
19 may be able to be expedited from whatever we come up with
20 today. But I don't think that we should squander the
21 opportunity, since we're all here, to sit down and see
22 what we can hammer out.

23 CHAIRMAN GETZ: Anyone else?

24 MR. SERELL: We're in agreement.

1 CHAIRMAN GETZ: Anyone else want to
2 speak to that issue?

3 MS. AMIDON: I would just say that we
4 would probably -- Staff would probably make a
5 recommendation on when we might receive the Commission's
6 decisions on the Motions to Intervene. Because, as we go
7 move ahead with discovery, if the motions are not
8 determined, there may be some discovery disputes. So,
9 that's just something that we'll request in our letter is
10 a timely decision on the Motions to Intervene.

11 (Chairman and Commissioners conferring.)

12 CHAIRMAN GETZ: All right. Well, let's
13 -- our inclination then is to defer a decision at the
14 moment on the Petitions to Intervene, to take those under
15 advisement. But, having said that, to the extent that
16 things break down entirely today, we are upstairs and we
17 can be summoned. And, Commissioner Ignatius, did you have
18 something?

19 CMSR. IGNATIUS: There is one other
20 thing I wanted to do, and this is similar to something I
21 said at the Site Evaluation Committee proceeding. I'm in
22 a position of serving dual roles here, being part of the
23 Subcommittee that heard the Site Evaluation Committee
24 docket and part of the Commission tribunal hearing this

1 proceeding. That's -- important for everyone to
2 understand that, in the Site Evaluation Committee process,
3 we heard testimony about the Purchase Power Agreement, but
4 we did not make rulings on the Purchase Power Agreement.
5 The final decision of the SEC was to approve the Laidlaw
6 application conditional on a number of things, one of
7 which was approval of the Purchase Power Agreement by the
8 Public Utilities Commission.

9 There was testimony about the PPA, and
10 the transcripts from that are available to anyone who
11 would like to see them. There were a few portions that
12 were done in confidential session that you would not be
13 able to see, but we tried very hard to keep them -- as
14 much of it done in public session, so that anyone could
15 take a look, whether you're an intervenor or not, the
16 transcripts are available.

17 And, as I made clear on the record in
18 that proceeding, I did not take a position on the merits
19 of the PPA. It would be inappropriate, because I knew I
20 would be coming to this proceeding, and would not make a
21 decision on anything until a full record had been
22 developed. So that I have been completely open to what
23 those terms, although I heard some of the testimony about
24 the terms, have not made any conclusions about whether

1 they are in the public interest or not. And, encouraged
2 people to be aware of this docket, if they had other
3 issues they wanted to raise regarding the pricing and
4 whether or not they considered this to be in the public
5 interest.

6 So that, although I maybe heard more
7 than some people about the PPA, I come to this proceeding
8 without having reached any conclusions about it, and
9 wanted to be certain that people understand that as we
10 begin this process. Thank you.

11 CHAIRMAN GETZ: All right. Is there
12 anything else we need to hear this morning?

13 MR. RODIER: Excuse me. Mr. Chairman,
14 we didn't -- we got Public Service's objection to our
15 petition late yesterday afternoon and Laidlaw's this
16 morning. They both cited a lot of case law. We haven't
17 had a chance to look at it. So, if you're going to take
18 this under advisement, could we have a few days to perhaps
19 analyze their objection and respond? I mean, just for
20 looking up the cases that they cited and for things like
21 that?

22 CHAIRMAN GETZ: I think we've heard
23 enough on these issues --

24 MR. RODIER: Okay.

1 CHAIRMAN GETZ: -- that we can reach
2 them and make a decision.

3 MR. RODIER: That's fine.

4 CHAIRMAN GETZ: So, I would not set an
5 extra date for written submissions on Petitions to
6 Intervene. Ms. Hatfield.

7 MS. HATFIELD: Thank you, Mr. Chairman.
8 Did you take Mr. Rodier's suggestion about taking
9 administrative notice of the Site Evaluation Committee as
10 a motion to do that? And, if so, will you be rendering a
11 decision on that in your procedural order?

12 CHAIRMAN GETZ: Well, we will take it
13 under advisement, yes. Is that --

14 MR. RODIER: It really wasn't a motion.
15 It was, you know, --

16 CHAIRMAN GETZ: Just a suggestion?

17 MR. RODIER: -- just float it out there.
18 Yes.

19 MS. HATFIELD: I raise it, because I
20 think it's relevant to the points that Commissioner
21 Ignatius makes, that, although the PPA, it sounds like it
22 was discussed at length in the Site Evaluation Committee
23 proceeding, unless something is put in the record in this
24 case, it isn't before the Commission. So, I just wanted

1 to point that out.

2 CHAIRMAN GETZ: And, I think Laidlaw
3 also made a comparable suggestion. So, we will take under
4 advisement that issue, with respect to taking
5 administrative notice of that docket.

6 Anything further?

7 (No verbal response)

8 CHAIRMAN GETZ: Okay. Hearing nothing,
9 then what we'll do at this time is close the prehearing
10 conference, await a recommendation from the parties,
11 preferably it will be a joint recommendation. If not,
12 then we will -- we're available to render a decision or
13 we'll make a decision based on the papers that are
14 submitted. Thank you, everyone.

15 (Whereupon the prehearing conference
16 adjourned at **12:33 p.m.** and a technical
17 session was held thereafter.

18 Subsequently, the prehearing conference
19 reconvened at **3:25 p.m.**)

20 CHAIRMAN GETZ: Okay. Good afternoon.
21 We're back on the record in Docket DE 10-195. As near as
22 I understand it, there is a request for us to rule on the
23 Petitions to Intervene, that it would be helpful in, I
24 guess, establishing a procedural schedule, which it

1 appears there's a procedural schedule that has been agreed
2 to, is that -- Ms. Amidon, is that --

3 MS. AMIDON: That's the procedural
4 schedule that Staff has proposed, working off a hearing
5 date in December, which was requested by the petitioners.
6 We haven't gotten specific agreement from the other
7 parties, and I know there were a couple parties who were
8 interested in understanding where their -- how their
9 Motions to Intervene would be resolved, before they agreed
10 to this or felt like they had the status to object to it
11 or ask for a different schedule. So, that is -- this is a
12 schedule we're proposing at this point, even though it's
13 what Staff considers to be very truncated for this docket.
14 We think it's very short.

15 CHAIRMAN GETZ: Okay. Well, let me
16 address the issue of the Petitions to Intervene first, and
17 then I think may have some questions about the procedural
18 schedule.

19 We have deliberated and determined to
20 grant all of the Petitions to Intervene. I'm not going to
21 go into detail at this point the basis for our decisions
22 on the various petitions, but we will do that in an order
23 that will address the intervention and the prehearing
24 conference and the procedural schedule.

1 So, with that, I guess my first question
2 is primarily to Laidlaw. Because, if it looks like
3 there's going to be a hearing at the end of December,
4 obviously, we're not going be issuing a written decision
5 until January 2011.

6 MR. SERELL: I think, all I can say is,
7 obviously, the earlier the better for us. But we
8 understand the competing concerns of everyone, including
9 Staff. And, you know, with that, you know, with a hearing
10 of December 22nd [28th?], if that is the best that the
11 Commission can offer, and I understand it is, then, you
12 know, we will live with that, and the schedule that Staff
13 has proposed is fine with us.

14 So, you know, as we said, there's no
15 guarantees on our end. But, the sooner we get a decision,
16 the better position we're going to have with respect to
17 our tax credits. So, working off a hearing date of
18 December 28th, you know, we're okay with that schedule.

19 I guess the only thing I wasn't totally
20 clear on, it says "Hearing 12/28 or 29". If the
21 Commission has that flexibility, we'd suggest that it be
22 scheduled for the 28th, and the 29th be left open, if
23 necessary, in case it ran over. But, beyond that, we can
24 live with that schedule.

1 CHAIRMAN GETZ: Okay. And, let me just
2 ask some other questions looking at this, either for you
3 or for anyone else. So, I take it then that -- so,
4 discovery would go for the next 27 days, effectively, on
5 the prefiled testimony. And, then, there's going to be
6 some combination of technical sessions. And, then,
7 responses to that would be early November. I guess, if
8 there's, and I'm not going to try to micromanage this, but
9 it seems like that could effectively be a shorter time.
10 Then, there's data -- then, there's testimony due
11 November 23rd by Staff, OCA, any intervenors. And, then,
12 I guess rebuttal testimony would be from, Mr. Bersak,
13 would be from PSNH and/or Laidlaw?

14 MR. BERSAK: If necessary, yes.

15 CHAIRMAN GETZ: So, is there any
16 possibility there wouldn't be rebuttal testimony and the
17 hearing could be moved forward?

18 MR. BERSAK: It's possible, I suppose.
19 I mean, we haven't seen what the scope of the proceeding
20 is going to be yet, nor what the other parties are
21 bringing or raising as issues. But, certainly, you know,
22 if we don't have to file rebuttal testimony, we won't do
23 so.

24 CHAIRMAN GETZ: Okay. I'm just trying

1 to think through a lot, not having seen this before, what
2 their options are, what types of flexibility are built in
3 or how long -- Ms. Hatfield?

4 MS. HATFIELD: Mr. Chairman, we would --
5 we think this is extremely aggressive. We're willing to
6 try to work to abide by it. I wanted to raise two things.
7 One, in light of all of the other hearings the Commission
8 has in December, we'd prefer not to go any earlier in
9 December. And, also, we have been talking with the
10 parties about an agreement to truncate the deadlines for
11 objections to data requests and the corresponding motions
12 to compel, so that we could try to get rulings on those
13 from the Commission. So, you might see that in Staff's
14 report. One thought was that the companies would have
15 five days for objections, and then the parties are
16 thinking of agreeing to five days for motions to compel,
17 to try to tee those issues up to you more quickly.

18 CHAIRMAN GETZ: Yes. It's not hard for
19 me to imagine circumstances under which there may be
20 motions to compel and arguments about relevance in this
21 proceeding. So, I guess that's wise that we be thinking
22 through how to handle that in the most efficient manner.
23 So, Ms. Amidon.

24 MS. AMIDON: Thank you, Mr. Chairman.

1 What I was going to offer was what Ms. Hatfield said, but,
2 in addition, we have the agreement of PSNH and Laidlaw
3 that they would respond to data requests when they could,
4 but no later than ten days after they were propounded,
5 which is different from the typical 14 days that our rules
6 allow. So, we did believe that the rolling data requests
7 was responsible and to allow for full discovery,
8 especially in such a short time frame for this proceeding.

9 CHAIRMAN GETZ: Okay. Well, anyone else
10 have anything to say about the schedule?

11 MR. OLSON: Mr. Chairman, I realize I
12 may be pushing the rock uphill. But, hearings on the 28th
13 and 29th, and effectively not getting a ruling till
14 January, it seems that perhaps we could look at maybe
15 having the hearing in the second week of January, so that
16 the parties aren't preparing cross-examination and dealing
17 with hearings through the holidays. But that's just a
18 suggestion.

19 CHAIRMAN GETZ: Ms. Hennequin.

20 MS. HENNEQUIN: I just want to reinforce
21 what I had said earlier, our concern with how 10-160 plays
22 out. My understanding is there is a hearing on that on
23 November 30th, so there would hopefully be an order in
24 December. And, I think, with what Mr. Olson suggested, if

1 we can move the hearing into January, that might let us be
2 informed by the decision out of 160 before the public
3 record would close on 195. So, we would also be more in
4 favor of a January date for the public hearing -- or, for
5 the hearing.

6 MR. SERELL: We are not in favor of a
7 January date, for all the reasons we gave earlier. The
8 longer we push this out, the greater the risk that we're
9 going to lose the credits that we got. And, the end of
10 the year, I mean, it is a time that we can at least look
11 to and say "We've had our hearing. All we're waiting for
12 is the order now." If we push it into January, it's much
13 more problematic for us.

14 CHAIRMAN GETZ: Mr. Olson.

15 MR. OLSON: Well, I just wanted to
16 clarify, because there was an off-the-record discussion
17 about the credits that I think is worth at least putting
18 some portion of it on the record. Because it seems that
19 the credits are what drives this very, very aggressive
20 schedule. And, it's not clear who benefits from the
21 credits. Certainly, it sounds like PSNH does not. As
22 Attorney Bersak says, PSNH makes no money out of the
23 transaction. It sounds like Laidlaw certainly benefits.
24 And, so, hurrying up to do this schedule puts more dollars

1 in Laidlaw's pocket.

2 We heard off the record that there was
3 some amount of money, something in the neighborhood of
4 \$3 million, that somehow benefits the City of Berlin.
5 Whether that money ceases to be available in January is
6 very unclear to me at this point. So, I just wanted the
7 Commission to be aware that the aggressiveness of the
8 schedule seems to be driven by things that either directly
9 just benefit Laidlaw, or, to the extent they benefit the
10 City of Berlin, but remain a little unclear to me. And,
11 so, I don't --

12 CHAIRMAN GETZ: Any thoughts,
13 Mr. Needleman?

14 MR. NEEDLEMAN: I think the best way to
15 clarify this is to look to the record of the Site
16 Evaluation Committee. It was fully developed there. Many
17 of these questions were addressed in a lot more depth.
18 And, I think that, to the extent the Commission or anybody
19 has questions about that, it was addressed there, and it's
20 not a confidential part of that transcript.

21 And, if there are specific questions
22 from the Commission, we can certainly answer them now.

23 CHAIRMAN GETZ: All right. Then, we've
24 shared our ruling on the Petitions to Intervene. It

1 sounds like we don't have a complete meeting of the minds
2 on the procedural schedule. So, I don't know if the
3 intention was to go back to a technical session, to see if
4 there is a meeting of the minds? Or, should I take it
5 that this is a -- we have a proposal by Staff that PSNH
6 and Laidlaw and the OCA support, but we have misgivings by
7 other parties who would like a longer procedural schedule?
8 Is that a fair characterization?

9 MR. RODIER: You can put CP down as
10 supporting that schedule.

11 CHAIRMAN GETZ: Thank you.

12 MR. OLSON: And, just so we're clear,
13 Mr. Chairman, the schedule is a compromise from what Staff
14 originally proposed, which would have put a hearing date
15 at February 22nd under their proposal. We're not
16 objecting to the procedural schedule, other than asking
17 for, rather than a hearing on December 28th or
18 December 29th, we have a hearing as soon as you can in
19 January, but past the holidays. That's all.

20 CHAIRMAN GETZ: Okay.

21 MR. OLSON: And, so, I mean, it's a
22 matter of, you know, getting past the holidays, and being
23 in the tail end of the first week or the beginning of the
24 second week in January, which I can't imagine such a

1 ruling wouldn't occur until sometime in January anyways,
2 will make any kind of difference to Laidlaw and its need
3 for tax credits.

4 CHAIRMAN GETZ: All right. Thank you.

5 MS. AMIDON: I just have one final
6 observation. Based on the technical session, it might be
7 good to get affirmation from Laidlaw at this point, they
8 agreed that they would be responsive to data requests?

9 And, the second point that Staff would
10 like to make is, if there are discovery disputes, which
11 can affect the procedural schedule, we reserve our right
12 to propose a different schedule for the Commission, so
13 that the proceeding may be conducted in an orderly way.

14 MR. SERELL: I'll respond to that, but I
15 had a question for the Commission first. I had been
16 operating under the assumption, and maybe you can correct
17 me if I'm wrong, that once any entity was granted
18 intervenor status that they were a party, and, then,
19 technically, could be the subject of discovery requests.
20 So, we assumed that, if discovery requests were directed
21 to us, that we would respond, obviously, consistent with
22 the scope of the proceeding as we understand it.

23 But we also understood, to the extent
24 anybody else was granted intervenor status, they could be

1 the subject of discovery requests also. We may not have
2 any for them. But I just assumed that, if you were a
3 party, you could be the subject of discovery requests.
4 So, I guess I'd like clarification of that.

5 But, with that question, yes, we would
6 certainly be prepared to respond to discovery requests,
7 consistent with what we understand the scope of the
8 proceeding to be.

9 CHAIRMAN GETZ: Mr. Rodier.

10 MR. RODIER: I was just going to say,
11 Mr. Chairman, the party, maybe CPD, I don't know, if we
12 don't put any testimony, there's nothing to discover.
13 We're not putting any evidence into the record. We'd be
14 doing some cross-examination. But eliciting some evidence
15 is a lot different than filing testimony and being subject
16 to data requests.

17 MR. SERELL: I'd just say, we haven't
18 submitted any testimony either. So, I mean, if that's the
19 bright line the Commission wants to draw, then I guess
20 we're on the same side as they are, but --

21 CHAIRMAN GETZ: Well, I think the
22 distinction we have here is, you know, typically, the
23 Commission's practice is, unless you file testimony, then
24 there wouldn't be, you know, subject to discovery. But we

1 have, you know, the Applicant, being PSNH, who has filed
2 the prefiled testimony. Laidlaw is the counterparty to
3 the contract that they're asking to be approved. So, it's
4 a little different than your typical intervenor --
5 intervenor status.

6 So, I think, obviously, there will be
7 issues of relevance in the normal scope of discovery. But
8 I guess I would say, at this point, let's see where the
9 discovery goes and how we need to deal with it, if it
10 looks like it's going beyond the bounds of what's
11 reasonable under the circumstances.

12 MR. SERELL: I think I'll just answer,
13 we would not object -- we would not assert a blanket
14 objection to discovery requests directed at Laidlaw.

15 CHAIRMAN GETZ: Did you have something,
16 Mr. Bersak?

17 MR. BERSAK: Well, just that it sounds
18 like we're going to be receiving, we, PSNH, will be
19 receiving the bulk of the discovery. And, that's fine.
20 We're the utility, we're the Applicant. But, you know,
21 throughout everybody's remarks, questions of scope and
22 relevance and objections and motions to compel have come
23 up. And, it would be very, very difficult for us to
24 respond within the rolling data request time period

1 without knowing what's in the scope and what's out.

2 There was a lot of discussion this
3 morning about "wood". Is wood in or is wood out? Was
4 wood dealt with at the Site Evaluation Committee or is it
5 going to be a subject here?

6 We've heard from the Power Generators
7 Association, they want to deal with the "procurement
8 methodology". Is that in or is that out? Is that a part
9 of the docket DE 10-160 or are we going to deal with that
10 here?

11 CPD and Concord Steam have talked about
12 the complaint docket, "09-067". Are we going to deal with
13 that one here or is that one out?

14 It would be very helpful for us, as we
15 try to comply with this very quick discovery turnaround to
16 know what's the boundary of the playing field that we're
17 on.

18 MS. AMIDON: Mr. Chairman, I would
19 suggest that, when there is an objection and a motion to
20 compel, the Commission could rule on those issues at that
21 time.

22 CHAIRMAN GETZ: And, my first
23 inclination, Mr. Bersak, is that, in the abstract, it may
24 be a little difficult to give you the specific parameters.

1 It depends on what the questions are. Ultimately, is the
2 Purchase Power Agreement in the public interest? And, I
3 think what we're hearing is there's some arguments of how
4 that will play out in terms of the effects it might have.
5 So, I think, ultimately, Ms. Amidon is correct, that we'll
6 have to wait and see what the discovery looks like before
7 we can formulate a response on some of those issues.

8 One other thing I would say is, and I
9 would -- I'm not going to make a ruling today, but I would
10 highly encourage, this issue I raised earlier with
11 Mr. Shulock. It does appear to me in any regard that
12 Concord Steam, Clean Power, the wood IPPs, and New England
13 Power Generators have a very close common set of issues in
14 this proceeding, ultimately, with respect to the Purchase
15 Power Agreement and its reasonableness. I would highly
16 encourage working together, in terms of discovery, in
17 terms of testimony, cross-examination, any briefing that
18 may occur. And, certainly, if there's some consolidation
19 on discovery, then that will make it a much quicker
20 process for PSNH and/or Laidlaw to respond to the
21 questions, duplicative discovery can eat up a lot of time.
22 So, I would urge you to do that. If need be, we may have
23 to make a ruling on it. But, I think, at this juncture,
24 hopefully, that's enough of a signal to the parties.

1 Anything else then that we can be of
2 assistance on?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Then, hearing
5 nothing further, we will close this prehearing conference.
6 Thank you, everyone.

7 **(Whereupon the prehearing conference**
8 **ended at 3:43 p.m.)**

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