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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

November 3, 2009 - 10:11 a.m.  
Concord, New Hampshire

NHPUC NOV13'09 AM 11:02

RE: DE 09-067  
CLEAN POWER DEVELOPMENT, INC:  
Complaint against Public Service  
of New Hampshire.  
(Prehearing conference)

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

APPEARANCES: Reptg. Clean Power Development, LLC:  
James T. Rodier, Esq.  
  
Reptg. Public Service of New Hampshire:  
Robert A. Bersak, Esq.  
  
Reptg. Concord Steam Corporation:  
Douglas L. Patch, Esq. (Orr & Reno)  
  
Reptg. the City of Berlin:  
Patrick MacQueen, City Manager  
  
Reptg. the Sierra Club:  
Arthur B. Cunningham, Esq.  
Catherine Corkery, Dir. - N.H. Sierra Club

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

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

Reptg. Eastern Construction Management:  
Christopher Hodge, President

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

Reptg. PUC Staff:  
Suzanne G. Amidon, Esq.  
Thomas C. Frantz, Dir. - Electric Division  
Steven E. Mullen, Asst. Dir. - Electric Div.

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1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. This is a prehearing conference in docket DE  
4 09-067. I'll begin with a summary of the procedural  
5 schedule for this proceeding. And, since there are a  
6 number of people here who may not be familiar with PUC  
7 procedures, I will describe how the prehearing conference  
8 will be conducted this morning. But let me begin with the  
9 procedural background.

10 On April 7, 2009, Clean Power  
11 Development filed a complaint against Public Service  
12 Company of New Hampshire, claiming that PSNH refused to  
13 enter into negotiations to purchase the energy, capacity  
14 and renewable energy certificates associated with the  
15 output of a 29 megawatt biomass fuel combined heat and  
16 power energy facility that Clean Power plans to build in  
17 Berlin, New Hampshire. On April 14, the Commission issued  
18 a secretarial letter directing PSNH to answer the charges  
19 in the complaint, and the answer was filed on April 28,  
20 with PSNH denying any wrongdoing.

21 On May 29, Clean Power filed a request  
22 for a formal investigation. During June and July, the  
23 Commission's General Counsel met with Clean Power, Public  
24 Service Company of New Hampshire, and Concord Steam, in an  
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1 attempt to assist the parties in resolving the dispute,  
2 but the parties were not able to settle their differences.  
3 On September 14, Clean Power filed a subsequent motion  
4 requesting that we open a formal investigation. PSNH  
5 filed a response, and there were other cross filings after  
6 that.

7 And, the Commission issued an order of  
8 notice on October 9, indicating that there may be a basis  
9 for the dispute between the parties concerning the nature  
10 and extent of PSNH's legal obligation, and indicating that  
11 we would be opening an investigation pursuant to PUC Rules  
12 204.04 and RSA 365:4, in order to determine whether an  
13 adjudicative proceeding should be commenced. And, the  
14 order of notice set the prehearing conference for this  
15 morning. I'll also note, as another procedural matter,  
16 that the affidavit of publication has been filed in this  
17 proceeding.

18 Now, turning to how we're going to  
19 conduct the prehearing conference this morning, I'll begin  
20 by taking appearances, and that simply means that we'll  
21 ask the parties or attorneys for the parties or other  
22 representative for any organizations that have filed  
23 Petitions to Intervene to identify themselves and state  
24 their name and affiliation for the record. That we'll

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1 begin with the Complainant, Clean Power, we'll turn to the  
2 -- well, not right this second.

3 MR. RODIER: Oh, I'm sorry.

4 CHAIRMAN GETZ: Let me try to go through  
5 --

6 MR. RODIER: I'm sorry.

7 CHAIRMAN GETZ: -- so that everyone  
8 understands the process this morning. Then, we'll turn to  
9 the Respondent, which is PSNH, and to the Consumer  
10 Advocate and to Staff. And, then, I'll go through my list  
11 of all the parties that have filed Petitions to Intervene,  
12 so we can take their appearance and get a feel for who  
13 precisely is here this morning.

14 After we take appearances, then we'll  
15 provide an opportunity to hear statements of positions.  
16 Now, anyone can make a statement of position. I'll go  
17 through a list of the attorneys -- similarly to the way we  
18 did appearances, to provide an opportunity for statements  
19 of positions, but I also note that you do not have to be a  
20 party to have filed a Petition to Intervene to make -- to  
21 state your position. Under our rules, Puc 203.18, any  
22 person can make a public comment or state their position  
23 at a prehearing conference or at a hearing.

24 After we hear the statements of  
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1 positions, then we will turn to the Petitions to  
2 Intervene. I think it might be helpful at that time to  
3 describe the process and the range of options available to  
4 persons with respect to Petitions to Intervene or how else  
5 to participate in a PUC proceeding. And, then, finally,  
6 we'll address procedural issues. And, I'll just note that  
7 at any time during the statement of positions or dealing  
8 with the Petitions to Intervene, that the three of us may  
9 be asking questions of the parties.

10 So, with that, let's now turn to  
11 appearances. Mr. Rodier.

12 MR. RODIER: Thank you. Good morning,  
13 Mr. Chairman and Commissioners. Jim Rodier, for Clean  
14 Power Development.

15 CHAIRMAN GETZ: Okay. Mr. Bersak.

16 MR. BERSAK: Good morning,  
17 Commissioners. My name is Robert A. Bersak. I'm the  
18 Assistant Secretary and Assistant General Counsel for  
19 Public Service Company of New Hampshire.

20 CHAIRMAN GETZ: Thank you. Ms.  
21 Hatfield.

22 MS. HATFIELD: Good morning,  
23 Commissioners. Meredith Hatfield, from the Office of the  
24 Consumer Advocate, on behalf of residential ratepayers.

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1 And, with me from the Office is Ken Traum.

2 CHAIRMAN GETZ: Good morning.

3 MS. AMIDON: Good morning. Suzanne  
4 Amidon, for Commission Staff. And, to my left is Tom  
5 Frantz, who is the Director of the Electric Division, and  
6 to his left is Steve Mullen, who is the Assistant Director  
7 of the Electric Division.

8 CHAIRMAN GETZ: Okay. Thank you.

9 MR. PATCH: Good morning, Mr. Chairman,  
10 Commissioners. Doug Patch, from the law firm of Orr &  
11 Reno, on behalf of Concord Steam Corporation.

12 CHAIRMAN GETZ: Good morning. Is there  
13 anyone here from the City of Berlin?

14 MR. MacQUEEN: Good morning. My name is  
15 Patrick MacQueen. I'm the City Manager of the City of  
16 Berlin.

17 CHAIRMAN GETZ: Good morning.

18 MR. MacQUEEN: Good morning.

19 CHAIRMAN GETZ: Town of Winchester?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Mr. Edwards?

22 (No verbal response)

23 CHAIRMAN GETZ: Representative Perry?

24 (No verbal response)

1 CHAIRMAN GETZ: Representative Borden?

2 (No verbal response)

3 CHAIRMAN GETZ: Representative Read?

4 (No verbal response)

5 CHAIRMAN GETZ: Representative Spang?

6 (No verbal response)

7 CHAIRMAN GETZ: Representative

8 McClammer?

9 (No verbal response)

10 CHAIRMAN GETZ: The Carbon Action

11 Alliance?

12 (No verbal response)

13 CHAIRMAN GETZ: Sierra Club?

14 MR. CUNNINGHAM: Mr. Chairman, members  
15 of the Commission, Arthur B. Cunningham, attorney for the  
16 Sierra Club. Along with Catherine Corkery, the Chapter  
17 Director of New Hampshire Sierra Club.

18 CHAIRMAN GETZ: Good morning. Is there  
19 anyone else here this morning seeking to intervene? Okay.  
20 Sir.

21 MR. HODGE: Good morning. Christopher  
22 Hodge, Eastern Construction Management.

23 CHAIRMAN GETZ: Okay. Thank you. I did  
24 have that on my list. All right. I think that completes

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1 what we need to do in terms of appearances.

2 So, then, let's turn to hearing the  
3 statements of positions. And, just let me note, with  
4 respect to statements of positions, we'll start with Clean  
5 Power, then we will go to the intervenors that are  
6 present, and the Consumer Advocate, and then Staff, and  
7 then PSNH. And, if there's anyone who is not seeking to  
8 intervene who would like to make a statement, they will  
9 also be provided an opportunity to make a statement. And,  
10 then, Clean Power will have the last opportunity to  
11 respond on statements of positions.

12 So, let's begin with Mr. Rodier.

13 MR. RODIER: Thank you, Mr. Chairman.  
14 By way of a brief introduction, this proceeding is really  
15 about two competing wood-fired biomass facilities in  
16 Berlin. The two are the Clean Power Development facility  
17 and the other one is the Laidlaw facility. Now, the CPD  
18 project is supported by the City of Berlin. It's only  
19 29 megawatts in size. So, it fits well with the amount of  
20 sustainable wood in the area. It's well ahead of -- it's  
21 number 229 in the ISO Transmission queue, it's ahead of  
22 Laidlaw. It's shovel-ready, meaning its size is  
23 underneath 30 megawatts that would trigger the need for  
24 Site Evaluation Commission approval. So, it's ready --

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1       it's really ready to go. And, then, one of the last  
2       things is it's got a memo of understanding with the big --  
3       the last vestige of the paper manufacturing industry up in  
4       Berlin is Fraser Paper, as the Commission knows, has a  
5       memo -- CPD has got a memo of understanding with Fraser to  
6       sell its steam. And, it also has various other memos of  
7       understanding that it has entered into very recently to  
8       build like a green energy park in Berlin that would create  
9       algae and things like that. If you wanted to know more  
10      about that, of course, you could ask Mr. Liston.

11                        So, that's really where we're coming  
12      from. There's only room in Berlin, with the available  
13      wood and the transmission constraint, there's only room  
14      for one of these projects. Now, Public Service,  
15      notwithstanding the overtures made by Clean Power  
16      Development and all of the benefits that are clearly in  
17      the public interest, Public Service did enter into an  
18      agreement with Laidlaw, for reportedly 20 years, providing  
19      Laidlaw with a guaranteed source of revenue.

20                        And, the thing that is of concern to  
21      Clean Power Development is Laidlaw has got no connection  
22      to New Hampshire, whereas Mr. Liston has got a long track  
23      record of developing renewable facilities. So, for all of  
24      these reasons, CPD is very upset.

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1                   The thing that really triggered the  
2                   filing of the complaint was, after so many attempts to try  
3                   to come to some mutually acceptable arrangement with  
4                   Public Service, he was told he's a bad person and they're  
5                   not going to do business with him. So, we filed the  
6                   complaint a week later, feeling we had no choice.

7                   So, having said that, then the -- I'm  
8                   going to get to the issues of law, and, first, this is  
9                   just a quick overview of the facts. We're concerned,  
10                  because Public Service has made so many statements about  
11                  the need for new renewable facilities. Its Least Cost  
12                  Plan that the Commission approved on February 27th, the  
13                  Least Cost Plan, the major theme of it was "we've got all  
14                  these requirements now to provide renewable energy, and we  
15                  don't think we're going to be able to do it unless we're  
16                  allowed to build our own renewable plants and put them  
17                  into rate base." That was in the plan approved by the  
18                  Commission on May 27th.

19                  On January 5th, PSNH's president says  
20                  "The development of new native sources of renewable energy  
21                  is essential for New Hampshire's energy future." That's  
22                  January 5th. Then, we come along in March, you know, "we  
23                  don't want to do business with Mel Liston." March 13th, I  
24                  get a letter saying "We don't need it." "We don't need

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1 it." I guess, because of economic conditions. It was  
2 totally clear. Later on, "we've got other irons in the  
3 fire", which begs the question "What are the other irons  
4 in the fire?"

5 So, "We don't need it." "We've got  
6 other irons in the fire." "We need" -- "We do need all  
7 these renewable resources." Then, he then makes a bona  
8 fide offer. One of the reasons they said we didn't make a  
9 bona fide offer is because he said it was because the CPD  
10 had a range of between 22 and 29 megawatts. "And, how are  
11 we suppose to respond to, you know, an offer that's that  
12 indeterminate and that uncertain, given a range between 22  
13 and 29 megawatts?" That is one of the reasons they have  
14 said "we can't evaluate your proposal." We said "well,  
15 give us the same deal as Laidlaw or we'll take 95 percent  
16 of what you paid Laidlaw." "Well, we can't do that,  
17 because the terms of the Laidlaw contract are  
18 confidential." And, then, last, but not least, they have  
19 been recently quoted as saying "we're trying to get away  
20 from long-term purchase contracts." That's what they told  
21 the media.

22 So, it just goes from "we need all of  
23 this stuff", "everything that we get we're going to have  
24 to step in and do it ourselves", to where "we don't need

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1 any", "we don't want any", "we don't want to deal with  
2 you", "we've got other irons in the fire", "the Laidlaw  
3 terms are confidential", and "we don't even want any more  
4 long-term contracts with renewable entities anymore."

5 So, that's what we have been through  
6 here. We have not said -- Public Service has  
7 characterized our position as trying to force this on  
8 them. We haven't said "you've got an obligation to  
9 purchase". We have said "you've got an obligation to  
10 consider all of your options and to evaluate all of those  
11 and get everything on the table and treat us fairly", and  
12 not just say "We don't like you. We don't think you're  
13 going to play ball with us, and, therefore, we're not  
14 going to deal with you at all." That's been there  
15 position. Now, --

16 CHAIRMAN GETZ: Well, let me just  
17 interrupt for a second. I just want to make sure I'm  
18 understanding.

19 MR. RODIER: Sure.

20 CHAIRMAN GETZ: Because I want to -- you  
21 said you're going to turn to the legal issue. And, the  
22 order of notice --

23 MR. RODIER: I was just about ready to  
24 do that. But go ahead, please.

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1                   CHAIRMAN GETZ: Okay. Well, in talking  
2 about the nature and extent of PSNH's legal obligation --  
3 well, if you're turning to that, because I was trying to  
4 -- I was going to try and paraphrase what I understood  
5 your position to be.

6                   MR. RODIER: Please.

7                   CHAIRMAN GETZ: Which I'm taking it to  
8 be that the duty here on PSNH is to consider in good faith  
9 any bona fide offer. Is that a fair characterization of  
10 the legal argument you're making? I mean, there may be  
11 other sources --

12                  MR. RODIER: Yes.

13                  CHAIRMAN GETZ: -- for that legal  
14 argument, whether it's in just and reasonable rates or  
15 least cost planning principles. But that's the  
16 fundamental legal duty you're arguing?

17                  MR. RODIER: That's a good way to put  
18 it.

19                  CHAIRMAN GETZ: And, then, what you're  
20 basically saying, in recounting some of the factual  
21 history, is that they breached that duty?

22                  MR. RODIER: Correct.

23                  CHAIRMAN GETZ: Okay.

24                  MR. RODIER: Yes. So, and that's a good

1 summary of what I should be saying here, but I would just  
2 like to explain the law just a little bit more?

3 CHAIRMAN GETZ: Please.

4 MR. RODIER: Well, we do feel that there  
5 is this obligation, at this time, of course, we have not  
6 tried to force this on Public Service. We haven't said  
7 "you have an obligation". We've said "we would like you  
8 to treat us fairly and consider this." The reason why is  
9 that, you know, Public Service quotes this 1982 case,  
10 where the Supreme Court said, basically, Public Service  
11 characterize it as "It's nobody's business how we manage  
12 our company. When we come in for cost recovery, you have  
13 a right to tell us whether the expenditures were prudent,  
14 actual and reasonable. Until then, we can do what we  
15 want."

16 But that predates, by many years, the  
17 passage of the least cost laws, which say "not so fast".  
18 Because of, for example, the Seabrook debacle, in about  
19 1990, the least cost planning laws were passed, where at  
20 least every two years, could be one year, but at least  
21 two, as the Commission well knows, they have to file their  
22 plan. What are all the demand-side options? What are all  
23 the supply-side options? How do you integrate it? How do  
24 you rank and prioritize? Of course, the Commission knows,

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1 the demand-side comes first and the renewables come  
2 second.

3 So, they're supposed to do that. That's  
4 a process. That plan is supposed to be out there. And,  
5 the thing is, that plan is not just something that you  
6 file, and then the company goes on and does what it wants  
7 to do under its business model. Anything that the --  
8 first of all, you're not supposed to get a rate increase  
9 unless you've got an approved plan. But the second thing  
10 is, in any proceeding initiated by Public Service  
11 thereafter, the Commission, under RSA 378:41 is supposed  
12 to tie back their reasoning in any other proceeding to  
13 whether or not it conforms to this least cost plan.

14 So, the plan is there so that the  
15 Commission can see how the company is running, where is it  
16 headed. So, if it's looking for relief of any kind, rate  
17 increases or anything else, the Commission has this plan  
18 on file. Right now, the plan on file lasted about -- I  
19 don't think it lasted two weeks. In some material  
20 respects, it's way off.

21 But the point I'm really making here, it  
22 is our view that this goes to least cost planning. The  
23 bottom line here is, if they're not even going to take a  
24 look at what CPD is proposing, how is anybody ever going

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1 to know whether it was better or not? CPD believes it's  
2 better.

3 Now, you could take the view, in  
4 accordance with Public Service's view of the law, "Well,  
5 Public Service comes in a year or two from now, they want  
6 to get a deal with Laidlaw approved under RSA 362-F, how  
7 does the Commission know that that's the best deal that  
8 was available?" That that is really harnessing the forces  
9 of the competitive market? CPD may no longer be on the  
10 scene. So, a lot of the options that they had at that  
11 time may no longer be around. So, that's why it's  
12 important to stay on top of this, and for the Company to  
13 have a open book, a process here that's fair and objective  
14 to evaluate all their options. Thank you, Mr. Chairman.

15 CHAIRMAN GETZ: Okay. Well, let me just  
16 follow up on one part of this, Mr. Rodier. And, I'd like  
17 to understand, because, as I take it, you're saying one --  
18 there's at least one source of this duty, and it's from  
19 the least cost planning statutes.

20 MR. RODIER: Right.

21 CHAIRMAN GETZ: And, that the duty is  
22 for PSNH to deal fairly and to listen to or consider an  
23 offer from Clean Power. But how does the Laidlaw contract  
24 figure into this? Or, are we to be looking, as a matter

1 of law and onto the facts, as to what's occurred or what  
2 should occur between Clean Power and PSNH solely? Or, are  
3 you asking us to somehow bring what's happened with  
4 Laidlaw into that calculus?

5 MR. RODIER: Well, the complaint, I  
6 mean, you can view the complaint as CPD against Public  
7 Service. But, because of the innate facts here, only one  
8 of those plans can go in in Berlin for the reasons that I  
9 said, it really does involve the Laidlaw deal. Why was  
10 the deal given to Laidlaw? That's part of our allegation,  
11 that PSNH has violated the least cost law. What was  
12 Laidlaw willing to do to get such preferential treatment?  
13 So, we think that has to become involved here.

14 CHAIRMAN GETZ: So, you're asking us not  
15 only to look at the relationship between Clean Power and  
16 PSNH, you're also asking us to investigate what occurred  
17 in the relationship between PSNH and Laidlaw as part of  
18 this?

19 MR. RODIER: Not as a central matter,  
20 but, certainly, tangentially, it can't be ignored. It's  
21 part of the facts.

22 CHAIRMAN GETZ: Any other --

23 MR. RODIER: In other words, let me just  
24 say this, Mr. Chairman, if Public Service should have an

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1       epiphany here, give Mel Liston a deal, there's not enough  
2       -- you can't have two projects in Berlin. There's not  
3       enough wood. There's not enough transmission capacity.  
4       So, I think -- I'm sure it's probably troubling for the  
5       Commission to hear that, but it does involve Laidlaw.

6                       Now, typically, as the Commission well  
7       knows, how this would work is they have to come in, PSNH  
8       would have to come in and get the Commission's approval  
9       under RSA 362-F, which is not just least cost, that's  
10      public interest. And, I don't know when that might be,  
11      but that is lurking out there, is when are they coming in  
12      under 362-F? Certainly, CPD would be an intervenor, if  
13      they're still viable, and we would challenge that with a  
14      lot of similar positions as we are saying here today.

15                      CHAIRMAN GETZ: Okay. Anything further?  
16      Commissioner Ignatius.

17                      CMSR. IGNATIUS: Thank you. Mr. Rodier,  
18      just one more question following that line. In talking  
19      about the least cost plan and least cost planning  
20      obligations and the Laidlaw contract, are you asserting  
21      that the Clean Power project would be at a lesser cost  
22      than Laidlaw?

23                      MR. RODIER: Nobody knows. We would --  
24      and including Public Service. We believe that it would

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1 be, but we really don't know. The Commission doesn't  
2 know. Nobody knows. Public Service would probably know  
3 or should know. All we can say is that "nobody knows."  
4 And, you should know and we're entitled to know -- or,  
5 we're entitled to an objective evaluation. If they told  
6 Mel "Look, sorry, you know, you're just not -- you're not  
7 even close to what Laidlaw is bringing to the table here  
8 in terms of benefits to ratepayers", Mel Liston is more  
9 than willing to live with that. But that is the issue.

10 CMSR. IGNATIUS: Thank you.

11 CHAIRMAN GETZ: Can I ask you one more  
12 legal question that's I think raised in the Petition to  
13 Intervene by Concord Steam. They appear to be taking a  
14 position that essentially the PURPA laws still apply and  
15 there's still an obligation on PSNH to, as I take it, and  
16 maybe Mr. Patch will have more on this, to take -- to  
17 offer a long-term contract of some sort. Does Clean Power  
18 share the same view about the application of the PURPA  
19 laws as Concord Steam?

20 MR. RODIER: Yes. We're aware of what  
21 Attorney Patch is going to say. We have had some  
22 awareness of this going back to day one here. We haven't  
23 tried to force our deal on Public Service by saying  
24 "you've got some kind of an obligation under federal law",

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1 because we're in a hurry, and we didn't see that that  
2 would get us to where we need to go for the quickest.

3 But, to answer your question, yes. I  
4 would -- obviously, Attorney Patch is much better prepared  
5 than I am to address that. I do know that Clean Power  
6 Development is going to concur what he has to say.

7 CHAIRMAN GETZ: Okay.

8 MR. RODIER: Okay. Thank you.

9 CHAIRMAN GETZ: Thank you. Well, then,  
10 let's turn to Concord Steam, Mr. Patch.

11 MR. PATCH: Thank you, Mr. Chairman,  
12 Commissioners. Just a couple of things preliminarily. I  
13 think this is made clear from the Petition to Intervene  
14 that Concord Steam submitted, but Concord Steam is one of  
15 a few wood-fired district heating plants in the world. It  
16 provides district heating service to downtown Concord.  
17 It's been in the process of developing a wood-fired  
18 combined heat and power plant in Concord since 2007. And,  
19 the size of that project, which is relevant on the PURPA  
20 issue, is approximately 17 megawatts. Concord Steam, of  
21 course, is a separate entity. It's not affiliated in any  
22 way with Clean Power Development.

23 Concord Steam, first of all, agrees with  
24 Clean Power Development that there needs to be an open,

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1 transparent, competitive and objective process for  
2 determining which renewable energy projects can best serve  
3 the PSNH customer base. Ratepayers will ultimately pay  
4 these costs. On its face, there does not seem to be any  
5 consistency, any protocol that PSNH follows when it  
6 determines with whom to enter into a renewable energy  
7 purchase power agreement.

8                   As Concord Steam said in its Petition  
9 for Intervention, PSNH does not seem to use consistent  
10 rules or formats to consider and evaluate renewable energy  
11 projects. Concord Steam believes that the Commission  
12 should ensure that PSNH has a fair and objective process  
13 for determining which projects it should enter into a  
14 purchase power agreement with, so that it isn't done in a  
15 piecemeal fashion. I believe it would ultimately make the  
16 Commission's job easier and more rational, if and when  
17 PSNH comes before you for a prudence review or the 362-F  
18 review.

19                   Secondly, Concord Steam also agrees with  
20 Clean Power Development's position on least cost planning.  
21 As has been noted, the least cost planning process  
22 mandated by RSA 378:38 requires an assessment of supply  
23 options and provisions for diversity of supply sources,  
24 and RSA 378:41 requires that any proceeding before the

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1 Commission initiated by a utility shall include, within  
2 the context of the hearing and decision, reference to  
3 conformity of the decision with the Least Cost Integrated  
4 Resource Plan most recently filed and found adequate by  
5 the Commission.

6 If this process, the least cost planning  
7 process, and the provisions in the law are going to have  
8 any meaning, PSNH should not be allowed to say one thing  
9 in the least cost planning docket about the process that  
10 it follows or intends to follow, and then do something  
11 that is contrary to that.

12 The third point that Concord Steam  
13 wishes to raise, and I would state is part of its  
14 preliminary position, is to focus on the -- the  
15 Commission's attention on the issue of PSNH's PURPA  
16 obligation, an obligation that's survived the 2005 Federal  
17 Energy Policy Act amendment. Unfortunately, there's been  
18 some confusion on this issue. And, Concord Steam submits  
19 that both PSNH and the Commission have not addressed the  
20 issue very clearly or consistent with what the federal law  
21 actually requires. There are a couple of references, a  
22 couple of statements included in Order Number 24,695,  
23 that's the order that was issued in November of 2006, in  
24 docket DE 04-072. That's the docket where PSNH's Least

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1 Cost Plan filed in June of 2005 was approved. According  
2 to that order, PSNH's position was, and I'm quoting:  
3 "Because New Hampshire utilities no longer have an  
4 obligation to purchase power from QFs, as the result of  
5 the 2005 Energy Policy Act, PSNH asserted that the  
6 criteria established in Order Number 19,052 have been  
7 rendered obsolete." That's Page 534, in Volume 91. In  
8 its analysis, Page 539, the Commission stated, and I'm  
9 quoting: "In recognition of the fact that utilities are  
10 no longer obligated to purchase QF power at avoided cost  
11 rates, we eliminate the requirement that PSNH include the  
12 purchase of QF power as a resource option." And, on that  
13 same page, Page 539, the Commission said: "Also, because  
14 the 2005 Energy Policy Act eliminated the relevant  
15 purchase requirements for New Hampshire utilities, PSNH  
16 shall not be required to file a forecast of avoided costs  
17 for the purpose of setting QF prices."

18 In correspondence that PSNH has  
19 submitted in this docket, the Company appears to recognize  
20 that it still has a PURPA obligation, but suggest that it  
21 is limited to short-term avoided costs established ten  
22 years ago in DE 09-099 [99-099?]. If you look closely at  
23 FERC rates that have been issued subsequent to the 2005  
24 federal law changes, they make it clear that electric

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1 utilities have a continuing PURPA obligation, and that it  
2 is more than short-term rates. While the Energy Policy  
3 Act of 2005, on its face, does say "terminated" -- that it  
4 "terminated mandatory purchase and sale requirements", it  
5 did so "when a QF has nondiscriminatory access to  
6 markets." It clearly left in place certain mandatory  
7 purchase requirements, and I cite you to 16 U.S. Code  
8 Section 824a, and, in particular, to the federal regs that  
9 FERC has adopted, 18 CFR, Section 292.303, 292.309. Under  
10 those rules, generators in ISO-New England, which are  
11 larger than 20 megawatts, are presumed to have  
12 nondiscriminatory access, and PSNH need not purchase from  
13 them unless that presumption can be overcome. That's  
14 292.309(a) and (e). However, there is a rebuttable  
15 presumption that QFs under 20 megawatts do not have  
16 nondiscriminatory access to the markets, regardless of  
17 where they are located. And, that's 292.309(d)(1).

18 The wood-fired combined heat and power  
19 plant that Concord Steam has been developing in Concord  
20 again is 17 megawatts. If we focus on the federal  
21 regulations, that rebuttable presumption, that a small QF  
22 does not have nondiscriminatory access, if you look at 14  
23 -- at 18 CFR 292.304(d)(1) and (d)(2), a small QF may have  
24 two separate options to sell their output. The first of

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1 those options, as the QF determines such energy to be  
2 available. The second of those options, pursuant to a  
3 legally enforceable obligation over a specified term.  
4 Section 292.304(d)(2) provides a further option for the QF  
5 that obligates itself to sell to a utility over a  
6 specified term, to select rates for such purchases based  
7 on either (1) avoided costs calculated at the time of  
8 delivery, or (2) avoided costs calculated at the time the  
9 obligation is incurred.

10 CHAIRMAN GETZ: So, it's your position  
11 that that's not permissive? That it's mandatory, that  
12 Public Service, in this case, has to enter into the  
13 legally enforceable obligation?

14 MR. PATCH: Unless it could overcome  
15 that presumption with regard to "nondiscriminatory access  
16 to market", if we're talking under 20 megawatts. It's the  
17 flip-side of that, if it's over 20 megawatts. And, so, --

18 CMSR. BELOW: Well, just to be clear,  
19 what -- what do the regs and laws that you're citing  
20 provide in terms of what utility has that obligation? Is  
21 it the utility -- the incumbent distribution utility where  
22 the plant that's under the small QF is located?

23 MR. PATCH: In the first instance, but,  
24 then as has always been the case with PURPA, in the event

1 -- there is also the ability to go beyond that and go to a  
2 neighboring utility. So, in the first instance, in this  
3 case it would be Unitil. But, then, if Unitil refuses,  
4 then the QF basically has the ability to go to a  
5 neighboring utility.

6 CMSR. BELOW: Okay.

7 MR. PATCH: So, just --

8 CHAIRMAN GETZ: Well, let me ask this  
9 question then.

10 MR. PATCH: Yes.

11 CHAIRMAN GETZ: How can they refuse? If  
12 you're saying that it's a "mandatory requirement", and I  
13 guess in the case of Concord Steam, that it would be  
14 Unitil.

15 MR. PATCH: Concord Steam is located in  
16 Unitil's territory, service area. But it's my  
17 understanding, and I don't have the cites to that portion  
18 of the regs in front of me, I'd be happy to supplement the  
19 record with that to the Commission. I didn't really come  
20 prepared to address that issue specifically. But it's my  
21 understanding that, as has always been the case under  
22 PURPA, that it wasn't changed by the 2005 Act, that the  
23 obligation extends beyond the service area. But I'm not  
24 familiar with the exact detail of exactly how that works,

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1 but --

2 CMSR. IGNATIUS: Well, I guess to make  
3 sure that we're following the same question and answer  
4 here, I think the Chairman's question was just as a matter  
5 of logic. If one first goes to the utility in which the  
6 plant is located, and you're saying that's a "mandatory  
7 obligation" to purchase power, but then there's a  
8 provision for what one does if that utility refuses to  
9 purchase power, suggests then that it's not mandatory,  
10 it's discretionary. And that -- I may be getting wrong  
11 what you're indicating the statute --

12 MR. PATCH: Well, again, I wish I had  
13 come prepared to address that question, and I really did  
14 not, unfortunately. But --

15 CMSR. IGNATIUS: Okay. And, there's  
16 opportunity to brief this further, --

17 MR. PATCH: Yes. I'd be happy to submit  
18 a letter or, you know, whatever the Commission desired to  
19 address that specifically. But I think the state of the  
20 law is pretty clear that there is the ability to be able  
21 to go to the neighboring utility.

22 So, if I could just sum up then, based  
23 on federal law and FERC regulations, Concord Steam  
24 believes that the Commission should either use this

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1 proceeding to establish PURPA rates, short-term and  
2 long-term, or it should open a new proceeding. This is an  
3 issue that has been misinterpreted and has laid dormant  
4 for some time, for a number of reasons. But PSNH's  
5 actions here indicate clearly that this issue needs a new  
6 focus and a different result. And, we think it would be  
7 appropriate again for the Commission to do it either in  
8 the context of this docket or a separate proceeding.

9 CHAIRMAN GETZ: I have a couple of  
10 questions I want to follow up with, Mr. Patch. First, I  
11 guess is pretty much a procedural issue, and whether, I  
12 may be getting ahead of myself with Petitions to  
13 Intervene, but whether Concord Steam should be intervening  
14 in this case or whether it's more, you know, if I'm  
15 looking at the Petition to Intervene, it sounds like a  
16 complaint, where there's common questions of law and  
17 perhaps a different, but similar, set of facts. So, I  
18 guess, should you have been filing a complaint or should  
19 we consider that a claim, enjoining the cases? I'm just  
20 wondering, from a procedural standpoint, what's the better  
21 or appropriate approach?

22 MR. PATCH: Well, I think it makes  
23 sense, as a matter of administrative efficiency, for the  
24 Commission to do it together. Because it seems to me that

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1 the issues are so similar that are raised by both Clean  
2 Power Development and Concord Steam that, you know, I  
3 think the relief that is being asked for is very similar.  
4 And, it seems to me that it would make sense for the  
5 Commission to do it altogether in one docket, rather than  
6 to have a separate complaint. Because part of the  
  
7 argument that we're making here is that there needs to be  
8 some rational, consistent, logical process that PSNH uses  
9 to evaluate purchase power agreements with renewable  
10 energy facilities. So, it seems to me to make sense to  
11 combine them.

12 CHAIRMAN GETZ: And, obviously, Mr.  
13 Bersak, we'll give up an opportunity to respond on that.  
14 The other issue, and putting aside the PURPA statute and  
15 regs, the Clean Power, in its opening, raised the issue of  
16 why it should be preferred over Laidlaw because it's a  
17 in-state entity. So, I'm trying to get to the issue of  
18 where the line is drawn. So that, if PSNH should give a  
19 preference to an entity within its territory, and then we  
20 have another entity that's in-state, but outside of its  
21 territory, and this duty to consider in good faith any  
22 bona fide offer, then does it go outside the state? Are  
23 there boundaries to be drawn? Or, is the duty that PSNH  
24 may have, is it universal?

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1                   MR. PATCH: That's an excellent  
2 question. I would need to research PURPA a little -- in a  
3 little bit more detail to answer it from a PURPA question.  
4 I know the RPS law was drafted in a way that encouraged  
5 the development of renewable energy projects here in New  
6 Hampshire, because of the economic benefits that it  
7 brings. If you look at the purpose clause in the RPS law,  
8 it refers to that. So, there seems to be a preference for  
9 renewable energy projects here in New Hampshire, because  
10 of the jobs, the tax revenues, the boost to the economy  
11 here in New Hampshire. You know, I think the Commission,  
12 though, would need to consider, obviously, there are some  
13 interstate commerce issues that could potentially be  
14 raised by that. But it just seems to me that the bottom  
15 line, it's still a fair, rational process for evaluating  
16 the different options that are out there. And, especially  
17 if, ultimately, they're coming before you to seek recovery  
18 of those costs and they're arguing that they're prudent,  
19 how do you know if one particular one is prudent, if they  
20 didn't evaluate three or four other options that might  
21 have been out there? So, --

22                   CHAIRMAN GETZ: Which almost suggests  
23 that it only should be procuring power through RFPs and  
24 that it shouldn't be or can't be signing contracts in

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1 individual circumstances?

2 MR. PATCH: Well, I think an RFP would  
3 certainly be a step in the right direction. Any process  
4 that was done in a periodic manner that was, again,  
5 rational, evaluated different options, and came out with  
6 what the best options were, would make a lot more sense  
7 than what happens now.

8 CHAIRMAN GETZ: Do you have anything  
9 further?

10 MR. PATCH: That's it. Thank you.

11 CHAIRMAN GETZ: Thank you. Actually, I  
12 would like to turn back to Clean Power, Mr. Rodier,  
13 because there was one item I had noted that I wanted to  
14 follow up on, in terms of the legal issues here. Now, in  
15 the original complaint I think it had -- it cited three  
16 complaints. I guess one other way to look at it is one  
17 complaint with three similar charges or similar --

18 MR. RODIER: Counts.

19 CHAIRMAN GETZ: -- yes, three counts or  
20 three legal sources for the duty that you're alleging.  
21 But, on the -- subsequently, there was a supplemental  
22 charge or count in the May 1 filing, and with respect to  
23 RSA 356, that asserts that, essentially, that there's a  
24 conspiracy for the purpose or effect of refusing to deal

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1 has been committed. And, you didn't mention that in your  
2 statement of position. But, I guess, first off, in terms  
3 of forum, am I understanding correctly, to the extent that  
4 such a charge under that statute is that that should be  
5 pursued through the Attorney General or through superior  
6 court, is that correct?

7 MR. RODIER: It could well be. You  
8 know, that occurred to me. But the complaint statute of  
9 the Commission says "any order or law". Now, -- which is  
10 365:1, RSA 365. "Violation of any law, order", and so it  
11 was my view that a violation -- well, you know, it could  
12 be a stretch, but it's a violation of law, restraint of  
13 trade. You may be correct, Mr. Chairman. Certainly, we  
14 haven't put any emphasis on that lately or here today.  
15 We're trying to focus, stay really focused on the issues  
16 of central importance to the Commission, which is least  
17 cost planning. I don't want to distract from this  
18 proceeding whatsoever. And, if it's advisable for us to  
19 make the record clear by withdrawing that, we will do  
20 that.

21 CHAIRMAN GETZ: Okay. Thank you. I'm  
22 just trying to understand.

23 MR. RODIER: Yes.

24 CHAIRMAN GETZ: I think, and 365:1 is

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1 written broadly. But my understanding of 356 is that the  
2 jurisdiction may lie -- to actually resolve a dispute  
3 under that may lie elsewhere. But maybe that's a legal  
4 issue that we're going to have to address.

5 MR. RODIER: Okay. I mean, it wouldn't  
6 be the first time that there's cases in court on the same  
7 subject matter as a case at the Commission, and they  
8 usually let the court run its course first. So, we'll  
9 certainly keep your comments in mind, Mr. Chairman.

10 CHAIRMAN GETZ: Because I think, again,  
11 and that's the understanding, that particular count, to  
12 the extent there's a conspiracy, then I guess, you know,  
13 it certainly means that there are two parties. And, then,  
14 I guess if you would be focusing on the contract between  
15 Laidlaw and PSNH as the source of that conspiracy, and  
16 then I guess we'd definitely looking at whether the  
17 refusal to deal is something that's part of the  
18 contractual obligation or it's some greater set of facts  
19 that goes beyond the contract?

20 MR. RODIER: It would be the latter.  
21 It's not going to be in the contract in so many words,  
22 that's for sure. It's the implicit, tacit understanding  
23 to freeze CPD out to make way for Laidlaw.

24 CHAIRMAN GETZ: So, it's a tacit

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1 understanding, as opposed to I think what you were  
2 discussing before, was whether it's a tacit understanding  
3 or it was an intent or it's just a factual consequence of  
4 the timing?

5 MR. RODIER: Right. Right. But  
6 conspiracies do not have to -- there does not have to be  
7 any explicit agreement. It can be, you know, it just can  
8 be intuitive. It can just be the sense of the situation,  
9 as the Chairman knows. So, --

10 CHAIRMAN GETZ: Okay.

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

12 CHAIRMAN GETZ: Thank you. Then, let's  
13 turn to the City of Berlin, Mr. MacQueen.

14 MR. MacQUEEN: Thank you, Chairman Getz,  
15 members of the panel. I'm here today representing the  
16 Mayor and Council of the City of Berlin. Berlin, the  
17 City, has watched its economy, its tax base over the last  
18 ten years basically disappear, it's lost thousands of jobs  
19 and a great portion of the tax base. It's watched its  
20 population drop from 20,000 to 10,000. Today, it has the  
21 lowest property values in the state, the lowest median  
22 family income, the highest poverty levels and the highest  
23 unemployment rates. It really can't go much lower. It's  
24 ready to start to thrive, and undoubtedly will.

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1                   It's been working with Clean Power for  
2                   the past three or four years towards the development of a  
3                   bio-energy facility in the City, which would provide jobs,  
4                   tax base, economic activity, diversity, and renewable  
5                   energy. There are many other creative synergies that  
6                   could develop from this kind of development in the City.

7                   To our knowledge, certainly, the  
8                   knowledge of the Mayor and Council of the City, Clean  
9                   Power has all its -- close to all, if not all of the  
10                  permits that it needs to go forward with this project,  
11                  which, as I say, we've been working on for I'm going to  
12                  say four years.

13                  MR. LISTON: Since 2006.

14                  MR. MacQUEEN: 2006, three years. Our  
15                  understanding and certainly our concern with respect to  
16                  this particular matter is that PSNH is basically refusing  
17                  to talk to Clean Power regarding a purchase power  
18                  agreement. And, if that's true, this potentially impacts  
19                  all of the ratepayers in the state, but certainly impacts  
20                  very greatly the residents of the City of Berlin, which  
21                  the Mayor and Council represent, and hence our very great  
22                  concern about this matter. That's all I have to say.

23                  CHAIRMAN GETZ: Thank you, sir.

24                  MR. MacQUEEN: Thank you.

1                   CHAIRMAN GETZ: Let's turn to Eastern  
2 Construction Management, Mr. Hodge.

3                   MR. HODGE: Good morning, Mr. Chairman.  
4 As a construction management firm, we're extremely  
5 concerned with development of various municipal and  
6 private industry projects in the North Country. If Clean  
7 Power Development is not allowed to proceed, and the  
8 synergies are not realized by the City of Berlin, as well  
9 as potential developers in Berlin, the projects will never  
10 move forward, which, in turn, will impact our business  
11 model as well.

12                   We're very concerned about Public  
13 Service's disregard, if you will, for the residents of  
14 Berlin, as well as the environment in the overall Coos and  
15 northern Grafton Counties. What will happen if Laidlaw is  
16 allowed to go on line? They intend to consume 700,000  
17 tons of biomass fuel per year. Well, there's not that  
18 much biomass in the North Country and within a reasonable  
19 radius to truck that product in to use as a fuel source.

20                   In turn, what will happen, the loggers  
21 in the area, because of the increased demand of wood  
22 chips, the loggers in the area will, in turn, begin to  
23 chip up hardwood saw logs, which could be used for veneer,  
24 or softwood saw logs, which could be used for dimensional

1       lumber or for pulp products. They'll be chipping these  
2       up. (a) It's completely under-utilizing the forest  
3       resource. Secondly, it's going to drive the price of  
4       biomass fuel up. If that happens, neighboring wood-fired  
5       power plants, in turn, will not be able to afford the  
6       increased cost of the fuel. These plants mostly have made  
7       their money, they're owned by outside, you know,  
8       out-of-state or foreign interests. If they're not  
9       realizing a profit, which right now their profit is --  
10      it's almost flatlined. If they're not realizing a profit,  
11      there's really no need to keep these plants in operation.  
12      So, it's likely that those plants will shut down,  
13      increasing the unemployment rate in the North Country,  
14      which is already at dramatic -- dramatically high levels.

15                    Another issue that we're concerned with  
16      is Public Service's disregard for the overall community in  
17      Berlin. They have entered into an agreement with Laidlaw,  
18      which is a private agreement, nobody knows what the terms  
19      are. If Laidlaw goes online, I don't know if you've ever  
20      seen where the plant is located, it's right in basically  
21      downtown Berlin. In the wintertime, that steam, which is  
22      going to be ground level steam, is instantly going to  
23      freeze. You're going to have a huge icing problem  
24      throughout the whole City of Berlin. Because there's no

1 accommodations for that plant to have a self-fed fuel  
2 source, there will be equipment running 24 hours a day,  
3 seven days a week. Right across the river from where that  
4 plant is located is a newly constructed retirement  
5 community. So, these people, in their older years, are  
6 going to, lo and behold, get to deal with a biomass power  
7 plant emitting steam on a constant basis, with trucks  
8 running in 24 hours a day, seven days a week, with loaders  
9 operating 24 hours a day, seven days a week, with, you  
10 know, backup emergency, horns going off and so on and so  
11 forth. It's not a sensible thing, if you will. It  
12 doesn't make sense.

13 Another issue is Public Service, who was  
14 already a monopoly as far as transmission capacity --  
15 transmission goes, they have entered into an agreement  
16 with Laidlaw. Now, Laidlaw is a company who's come into  
17 this state from New York. Basically, they were thrown out  
18 of New York State. They have sued a town they were doing  
19 business with in the State of New York, costing them tens  
20 of millions of dollars in legal fees. So, now, they  
21 migrate to New Hampshire, to the North Country. They set  
22 their sights on this power plant and start talking with  
23 Public Service of New Hampshire in an effort to come up  
24 with a 20-year power purchase agreement. They supposedly

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1 enter into an agreement that it's private, nobody knows  
2 what the terms are.

3 Now, Laidlaw, if I'm correct, which I am  
4 pretty certain I am, they closed -- their stock closed  
5 last night at a half of a cent. So, they're not a strong  
6 company. And, there's many people, including our  
7 interest, who believe that, if Public Service moves  
8 forward with Laidlaw, within a year or two or three,  
9 Laidlaw will likely say "well, you know, this just isn't  
10 working out for us." Because we don't have access to the  
11 contract that was drafted between Laidlaw and Public  
12 Service, nobody knows the terms. The terms could say  
13 "well, if Laidlaw decides that they're going to fold or  
14 they're going to get out of the business, Public Service  
15 has first option to buy the biomass power plant at 66  
16 megawatts."

17 CHAIRMAN GETZ: And, you're saying it  
18 may say that?

19 MR. HODGE: We don't know. Nobody  
20 knows, because it's a private document. There's no  
21 disclosure, there's no transparency. We don't, like has  
22 been previously said, we don't even know what the cost of  
23 energy is.

24 So, that being the case, if Laidlaw

1 decides "well, this just isn't it for us", Public Service  
2 likely will say "well, we have first option to buy the  
3 plant." And, now, all of a sudden they're in a  
4 competitive race with other biomass producers within the  
5 state, which legally they're not allowed to do.

6 It seems to us that this is a way to  
7 backdoor the whole system, for Public Service to get their  
8 foot in the door in renewable energy. And, because  
9 there's no transparency, it's a shot in the dark. Nobody  
10 knows.

11 If, once again, I want to reiterate, if  
12 Laidlaw is allowed to go online, there is not enough fuel  
13 to supply that plant. There's not enough fuel to support  
14 a 66 megawatt facility.

15 Clean Power Development has developed  
16 their facility looking ahead at what there is for  
17 available fuel consumption, and they're doing the  
18 environmentally responsible thing, the politically  
19 responsible thing, and the socially responsible thing for  
20 the North Country and the City of Berlin. That's all we  
21 have. Thank you.

22 CHAIRMAN GETZ: Thank you. Okay. Turn  
23 to the Sierra Club, Mr. Cunningham.

24 MR. CUNNINGHAM: I'll be brief,  
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1 Mr. Chairman. Thank you very much, members of the  
2 Commission. We particularly like this Clean Power  
3 Development from a policy point of view for the Sierra  
4 Club, because it's sustainable. We're concerned about  
5 forest practices. We're, obviously, concerned about  
6 renewable energy. We think that the Clean Power  
7 Development project fits the Sierra Club criteria for  
8 appropriate projects in this day and age.

9 We ask this -- we ask the Commission to  
10 very, very carefully, very carefully examine the good  
11 faith issue that's been suggested here by the Commission  
12 this morning. I've heard some disturbing facts this  
13 morning that I hadn't heard before about this Laidlaw  
14 relationship. So, I would ask the Commission to very  
15 carefully and very thoroughly investigate that issue, in  
16 terms of Public Service Company of New Hampshire's conduct  
17 with respect to this Clean Power Development project.  
18 And, we wish to participate in that review. Thank you.

19 CHAIRMAN GETZ: Thank you. Is there  
20 anyone else here who's either made a Petition to Intervene  
21 or seeks to make a public comment that wants to make a  
22 statement this morning? I know there's at least one  
23 gentleman who came in late.

24 (No verbal response)

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1                   CHAIRMAN GETZ: Okay. Then, hearing  
2 nothing, we'll turn to Ms. Hatfield.

3                   MS. HATFIELD: Thank you, Mr. Chairman.  
4 As the State agency charged with representing the  
5 interests of residential ratepayers here at the  
6 Commission, clearly, the OCA's primary concern in this  
7 matter is the impact upon ratepayers, which comes through  
8 as the cost of electricity.

9                   But we're also concerned with whether  
10 PSNH has complied with the requirements of the Least Cost  
11 Integrated Resource Planning statute, as well as other New  
12 Hampshire laws and policies promoting renewable energy.  
13 And, we are -- we agree with prior comments that a fair  
14 and consistent process is necessary, that results in the  
15 lowest cost to customers, while meeting all of the State's  
16 policies and laws related to renewable energy.

17                   I would point out, the Commission I'm  
18 sure remembers, that issues related to how PSNH procures  
19 and manages both short-term and long-term power on behalf  
20 of its customers has been raised in several dockets just  
21 over the past couple of years. One I believe Attorney  
22 Patch and Attorney Rodier referred to, Docket 07-108,  
23 which is PSNH's last Least Cost Plan that they filed, that  
24 was an issue that was raised. It was also raised in the

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1 Lempster Purchase Power Agreement case, Docket 08-077,  
2 where the issue of how PSNH identifies and enters into  
3 contracts was raised, and whether the Company should be  
4 using more of an RFP approach.

5           And, then, in recent Energy Service  
6 cases, that issue has also been raised, more on the  
7 short-term side, and most recently in Docket 09-180, which  
8 is PSNH's proposal for Energy Service for 2010. The  
9 Company has raised the issue about how it manages for the  
10 short-term supply needs and how costs are being shifted  
11 due to changes in the market to the captive customers,  
12 such as residential and small business customers. And,  
13 the Company used the term perhaps this is an "unintended  
14 consequence of restructuring".

15           And, so, we think that all of these  
16 things looked at together suggest that perhaps it is time  
17 to take a look at where we are with respect to the hybrid  
18 sort of restructuring posture that New Hampshire finds  
19 itself in. And, how do we grapple with the interface  
20 between the regulated entity and the private market in a  
21 way that, clearly, from our perspective, needs to benefit  
22 ratepayers?

23           And, we stand ready to assist the  
24 Commission, the Staff, and the parties, to the extent that

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1 we can be helpful in trying to help the Commission make  
2 its determination of whether or not this should proceed to  
3 an adjudicative proceeding. Thank you.

4 CHAIRMAN GETZ: Thank you. Ms. Amidon  
5 -- or, Commissioner Ignatius.

6 CMSR. IGNATIUS: Thank you. Just, Ms.  
7 Hatfield, has the OCA evaluated the statutes at play and  
8 reached a determination in your mind of what obligation is  
9 imposed on PSNH or other utilities to purchase power?

10 MS. HATFIELD: We haven't. And, we'd be  
11 happy to brief issues that would be helpful to the  
12 Commission. I, personally, am not familiar with the PURPA  
13 requirements that Attorney Patch was referring to.  
14 Clearly, in our RPS statute here in New Hampshire, that  
15 law does not require any utility to enter into a long-term  
16 contract with a renewable producer. It merely allows the  
17 utility the opportunity to do that. So, in our view, that  
18 it's clear that that's not a requirement.

19 But, in terms of the process for how a  
20 utility might take advantage of that, it still -- it does  
21 seem as though there needs to be a consistent process that  
22 is used. And, again, we'd be happy to participate in  
23 briefing or research that the Commission finds helpful.

24 CMSR. IGNATIUS: And, are you taking a

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1 position on which particular renewable plant, between the  
2 -- the competition between Laidlaw and Clean Power within  
3 Berlin? Do you have a position on that?

4 MS. HATFIELD: We don't. I think that  
5 this case also shows some of the difficulties in the  
6 somewhat overlapping, but also separate, jurisdiction of  
7 different regulatory bodies, such as the Site Evaluation  
8 Committee versus the Public Utilities Commission, and then  
9 other arenas outside of the state. And, we certainly  
10 don't have enough information about either project and,  
11 frankly, the OCA wouldn't ever be in a position to judge  
12 that, except for when it gets put into rates.

13 And, you know, the issues about the wood  
14 resource and that sort of thing is really something that  
15 is outside of a typical Commission proceeding of this  
16 sort. But, you know, they're very important issues, so it  
17 does make it more challenging.

18 CMSR. IGNATIUS: Thank you.

19 CHAIRMAN GETZ: Okay. Ms. Amidon.

20 MS. AMIDON: Thank you. Staff takes no  
21 position on the complaint. But we intend to fully  
22 participate in this docket to help manage it procedurally  
23 and to assure that the Commission is provided with the  
24 information it needs to determine whether, as stated in

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1 the order of notice, there is an obligation of PSNH to  
2 purchase power from CPD.

3 We have some procedural observations,  
4 too. But, as you described in your opening statement, you  
5 want to discuss that later, so we will offer our comments  
6 at that point.

7 CHAIRMAN GETZ: Okay. Thank you. Then,  
8 we'll turn to Mr. Bersak.

9 MR. BERSAK: Thank you, Mr. Chairman.  
10 Good morning, Commissioners. PSNH welcomes the  
11 opportunity to provide the Commission with information  
12 concerning the nature and extent of the Company's legal  
13 obligation to purchase power from power producers, such as  
14 Clean Power Development or Concord Steam, especially  
15 during this dynamic and ever-changing economic times that  
16 we find ourselves in today. Our management team,  
17 including our president, Gary Long, has carefully read the  
18 statements and comments of every party and every  
19 petitioner for intervention in this proceeding. As I will  
20 discuss later, there are many comments that are incorrect,  
21 inappropriate, and even libelous.

22 As you know, PSNH is the largest and  
23 most diverse provider of renewable electric energy in New  
24 Hampshire. Our energy service portfolio includes the

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1 largest biomass plant in the state, the largest wind  
2 development in the state, the largest trash-to-energy  
3 plant in the state, the largest photovoltaic solar project  
4 in the state. We purchase from dozens of hydro projects,  
5 waste-to-energy projects, and biomass projects besides  
6 those. PSNH has been involved more than any other entity  
7 in this state to create the many renewable energy options  
8 that exist today. Anyone who thinks that PSNH has created  
9 barriers to the creation of a renewable energy market is  
10 either mistaken, or is intentionally skewing reality in  
11 order to achieve their own objectives.

12 There is one primary barrier that  
13 project developers face, and that barrier is an economic  
14 barrier. They cannot finance their projects unless they  
15 have a long-term power purchase contract in hand. What  
16 the complainants in this case want is for PSNH to be the  
17 buyer of last resort. They want PSNH to enter into such a  
18 long-term contract with them when no one else in the  
19 market is apparently willing to do so. Other intervenors  
20 have even broader desires, that PSNH be required to enter  
21 into contracts with every renewable project that comes  
22 along. In essence, they are seeking a return to the '70s,  
23 the days of PURPA and LEEPA. Attorney Patch made that  
24 very clear here this morning. If so, this is not the

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1 proceeding to discuss those issues, as such a proceeding  
2 would have to include all the other electric distribution  
3 entities in this state.

4 Under PURPA and LEEPA, the state's  
5 utilities were required to buy the output from any and  
6 every entity that met certain statutory limitations. The  
7 Commission is well aware of the administrative burdens,  
8 the numerous proceedings, and lengthy disputes that  
9 surrounded the implementation of the PURPA and LEEPA  
10 requirements. As a result of PURPA and LEEPA mandates,  
11 PSNH was directed by this Commission to buy the output  
12 from dozens, many dozens of small power producers for  
13 terms ranging in length for up to 30 years.

14 Those purchase mandates turned out to be  
15 disastrous for PSNH's customers. To date, PSNH's  
16 customers have paid more than \$2 billion in overmarket  
17 costs, costs as a result of PURPA and LEEPA mandates, and  
18 that number is still growing. Every day that number gets  
19 larger as a result of such continuing PURPA obligations.  
20 For example, until January of 2019, PSNH must buy the  
21 output from the Concord waste-to-energy plant at levels  
22 that are much higher than today's market prices, pushing  
23 that \$2 billion penalty paid by consumers ever higher.  
24 What adds insult to this economic injury is that the

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1 citizens here in Concord, whose trash is being burned,  
2 don't pay a single penny of those costs. That's because  
3 the Commission's mandate was placed on PSNH, and not on  
4 Unitil, which serves the Concord area.

5 And, the Concord trash-to-energy plant  
6 is not the only such entity in Concord that PSNH's  
7 customers have had to unduly subsidize over the years.  
8 Concord Steam, one of the parties here today, was also the  
9 recipient of a PURPA rate order placed upon PSNH. During  
10 the period from 1984 to 2004, PSNH's customers have  
11 already been required to pay Concord Steam almost  
12 \$10 million above the market value of the energy that that  
13 plant provided.

14 This Commission has previously  
15 recognized, and I quote: "The single largest component of  
16 PSNH's stranded costs is the cost associated with  
17 purchases from facilities providing power to PSNH under  
18 the Public Utility Regulatory Policies Act (PURPA) and the  
19 Limited Electrical Energy Producers Act of 1978 (LEEPA),  
20 and RSA 362-A." That was said during the PSNH  
21 restructuring docket.

22 I suggest to those Legislators who have  
23 indicated a desire to participate here today, who say that  
24 they're interested to protect PSNH's customers from higher

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1 costs, that they not create new stranded costs tomorrow.  
2 Further, it is time for the state's other electric  
3 distribution entities to step up to the plate. PSNH's  
4 customers have paid enough in above-market costs to  
5 implement various public policy objectives. If Concord  
6 Steam truly intends to force the PURPA issue today, it  
7 should deal with Unitil, not PSNH.

8 That is why the Legislature, just over a  
9 decade ago, decided to restructure the electric industry,  
10 to let competitive market forces work, to allow customers  
11 to have a choice of energy suppliers. We have recently  
12 seen a growth in the number of consumers who have  
13 exercised that choice and that are buying from suppliers  
14 other than PSNH. As part of that restructuring, the  
15 Legislature determined that upon the start of competition,  
16 there would be no more purchase mandates under LEEPA.

17 In 1998, the Legislature enacted House  
18 bill 485 to end the mandatory power purchase requirement  
19 of LEEPA. And, Commissioner Below, undoubtedly you recall  
20 you were a sponsor of that bill. RSA 362-A:3 was changed  
21 by that legislation to state, "No purchases and related  
22 transactions involving qualifying facilities shall take  
23 place under LEEPA in any location where retail electric  
24 competition is certified to exist" today. That is the law

1 today.

2 A return to the days of mandated  
3 purchase requirements would be disastrous, as I said  
4 earlier. In May, the Governor of Vermont reflected on the  
5 costs of PURPA-mandated purchases in our neighboring  
6 state, when he wrote: "Under federal legislation known as  
7 "PURPA", utilities were forced to purchase electricity  
8 from Independent Power Producers under long-term fixed  
9 prices. Vermont consumers to date have paid a premium of  
10 more than \$400 million for that electricity." Vermont's  
11 \$400 million pales in comparison to the \$2 billion, and  
12 growing figure, that I mentioned earlier, that PURPA tax  
13 that's been endured by PSNH's customers.

14 As PSNH stated earlier in its written  
15 filings in this proceeding, other than any remaining PURPA  
16 requirement, there is no requirement for PSNH, or any  
17 other utility or potential or potential purchaser, to  
18 entered into long-term contracts with CPD, Concord Steam,  
19 or any other generator.

20 We understand that there are many  
21 competing interests involved in energy policy. Many of  
22 the parties seeking intervenor status, including Mr. Hodge  
23 here this morning, have cited some of those matters as the  
24 basis for their interest in this proceeding; matters such

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1 as jobs, economic development, public health, welfare,  
2 land use, forestry practices, and so on. PSNH does not  
3 dispute that these are all important and significant  
4 issues. But they are not matters that are properly the  
5 subject of a complaint investigation, such as this one,  
6 before this Commission.

7                   These matters are ones that the state's  
8 Site Evaluation Committee was created to review, consider,  
9 and opine upon under the auspices of RSA Chapter 162-H,  
10 not this Commission. If the various parties seek to  
11 examine matters such as these, PSNH suggests that they  
12 seek Site Evaluation Committee review of the various  
13 projects that have been proposed. To the extent that jobs  
14 and economic development, public health, welfare, land  
15 use, forestry practices, and so on, need to be considered  
16 between competing alternatives, and potentially mutually  
17 exclusive development, it is the Site Evaluation Committee  
18 that should assert jurisdiction to determine which, if  
19 any, such developments are best suited to move forward.  
20 They should not be pursued via a complaint against PSNH  
21 before this Commission.

22                   In this proceeding, the complainant and  
23 many parties seeking intervenor status have asserted that  
24 the Clean Power Development project has many synergies and

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1 efficiencies; that it would be a better steward of the  
2 forests; that it would be a better fit economically and  
3 visually for the City of Berlin. Attorney Rodier said  
4 that this morning. He said that only one of two competing  
5 plants can be built. Unfortunately, those allegations  
6 will go untested, as CPD has either fortuitously or  
7 conveniently decided to size its plant at 29 megawatts,  
8 just under the 30 megawatt cutoff for Site Evaluation  
9 Committee mandatory jurisdiction. This Commission's four  
10 members of the Site Evaluation Committee may want to  
11 consider whether it's necessary and appropriate to require  
12 a certificate from the Site Evaluation Committee by CPD,  
13 in order to ensure that the construction and operation of  
14 energy facilities is treated as a significant aspect of  
15 land-use planning, in which all environmental, economic  
16 and technical issues are resolved in an integrated  
17 fashion. That's the main purpose of the Site Evaluation  
18 Committee. Again, these issues should not be pursued  
19 against -- via a complaint against PSNH here in this  
20 proceeding.

21 Other intervention petitions cite to  
22 potential transmission issues. We heard transmission  
23 brought up this morning also. PSNH, and indeed all of New  
24 England, has an open transmission system operated by

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1 ISO-New England pursuant to FERC regulation. Transmission  
2 issues are not matters for consideration in a state  
3 complaint investigation such as this.

4           There have been multiple claims that the  
5 complainants' projects will produce energy that is  
6 economic and less costly for PSNH and PSNH's customers,  
7 and that, for some nefarious reason, PSNH has chosen not  
8 to purchase that economical energy. The mere fact that we  
9 are here today belies those allegations. PSNH is just  
10 five to six percent of the New England market.  
11 Apparently, the complainants have had no success finding  
12 anyone else within the remaining 95 percent of the market  
13 to buy the products from their plant. Otherwise, why  
14 would they be here today trying to force PSNH to buy what  
15 nobody else seems to want.

16           In today's competitive electric market,  
17 there are literally hundreds of participants in New  
18 England that have the ability to enter into a power  
19 purchase agreement with any generating plant that is on  
20 the transmission grid. In New Hampshire alone, there are  
21 eight other entities that distribute electricity to  
22 customers. As I noted earlier, within New England, PSNH  
23 is only five percent of all electric distribution. If  
24 these developers had an economic product, the competitive

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1 market would provide a buyer. It is telling that none of  
2 the other 95 percent of New England has come forward.  
3 There is no requirement for PSNH to be the buyer of last  
4 resort.

5 Clean Power Development has recently  
6 confirmed the fact that there are other markets available  
7 to it, when in the press it stated that "CPD is looking  
8 toward establishing a purchase power agreement in another  
9 market, such as Vermont or Massachusetts." That is  
10 exactly what the developer should be doing. That's  
11 exactly what the laws of New Hampshire require, that the  
12 competitive market determine what gets built, what gets  
13 developed, what comes on line.

14 CHAIRMAN GETZ: Mr. Bersak, you've been  
15 focusing on, and I assume this is all in the context of  
16 the nature and extent of PSNH's legal obligation, the  
17 things that PSNH is not required to do or the things that  
18 are beyond our jurisdiction or beyond, in your position,  
19 beyond our authority. But, what is the nature of the duty  
20 that PSNH owes here? I've read a number of the documents  
21 that have been filed -- well, I've read all the documents,  
22 but, in some of the documents filed by PSNH, it didn't  
23 seem to me that PSNH was taking a very different position  
24 from what I discussed with Mr. Rodier earlier, when I

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1       tried to paraphrase Clean Power's position. That at  
2       least, in essence, there's at least one duty we're dealing  
3       with here, that PSNH should give due consideration to bona  
4       fide offers. Do you agree with that formulation?  
5       Disagree with that? Because, in some of the documents, it  
6       seems that you're taking the position that you have indeed  
7       given due consideration.

8                       MR. BERSAK: Is there a legal obligation  
9       that we consider any and every proposal that comes in the  
10      door? No, there is no legal obligation to do that. Is  
11      there a good business obligation to do that? Yes, there  
12      is. And, I believe that we have. I will get more to the  
13      legal obligations that are in place in the state in a few  
14      minutes, if you let me proceed, Mr. Chairman?

15                      There are two municipalities seeking  
16      intervenor status in this docket, Berlin and Winchester.  
17      Both of them have the right under state law, contained in  
18      RSA Chapter 53-E, to become load aggregators. If the  
19      plants that they are advocating on behalf of have as many  
20      benefits as they claim, those municipalities may purchase  
21      the output from those plants and offer it for sale.

22                      There are some other claims that have  
23      been made before this Commission that are just plain  
24      unsupportable. Claims, for example, asserting that PSNH

1 has acted in an unconstitutional manner. That's absurd on  
2 its face. There are claims that PSNH is blocking or  
3 creating barriers to competitive developers. Apparently,  
4 that's based on the conception that we must enter into  
5 long-term contracts with every developer on the block.  
6 This is also incorrect. The LEEPA mandate disappeared a  
7 decade ago.

8 Many petitioners claim that PSNH's  
9 decisions are made in its interests only. This is a claim  
10 that was included in many of the nearly identical  
11 intervention requests made by the several state  
12 representatives. If, by this, the commenters mean that  
13 the decisions are made in the interest of PSNH's retail  
14 customers, then it's a correct statement. However, if the  
15 commenters are saying that PSNH's decisions are intended  
16 to create additional profit for PSNH's shareholder, then  
17 their comments are just wrong. This Commission is well  
18 aware that PSNH does not make one penny of profit on power  
19 purchase agreements. The costs of those purchases are  
20 fully reconciled dollar for dollar, and paid for by PSNH's  
21 customers, without a penny of profit going to PSNH. In  
22 fact, the only profit that PSNH has ever received from  
23 such power purchase obligations was the bonus created by  
24 the Legislature to buy down or buy out of them, because of

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1 the ill-conceived overmarket PURPA obligations.

2 One petitioner, the Town of Winchester,  
3 has pushed the envelope even further. In its intervention  
4 petition, the Town Administrator, the First Selectman, and  
5 the Economic Development Committee chair all stated that  
6 PSNH was guilty of bad behavior. Apparently, the town  
7 officials in Winchester have a short memory. About ten  
8 years ago, when the paper mill in that town was on the  
9 verge of shutting down, PSNH worked to save that mill and  
10 several dozen jobs. Notably, the Office of Consumer  
11 Advocate opposed that special contract that allowed the  
12 mill to continue operating. I do not recall the Town  
13 accusing the Office of Consumer Advocate of bad behavior  
14 then. Similarly, when American Tissue later filed for  
15 bankruptcy, PSNH kept the power going to the mills up in  
16 Berlin and Gorham, despite no legal obligation even under  
17 the bankruptcy court to do so. And, there was no  
18 guarantee we would ever recoup the dollars that it cost us  
19 to keep the power flowing.

20 I sincerely doubt that the residents of  
21 Winchester or Berlin are ready or willing to pay more for  
22 their electric energy. But, if they are, you know, they  
23 can become load aggregators, as I mentioned earlier. Or,  
24 soon they may be able to vote with their wallets, if this

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1 Commission approves PSNH's Renewable Default Energy  
2 Service rate that's the subject of Docket DE 09-186. The  
3 purpose of that proposal is to provide customers with the  
4 opportunity to support the development of qualifying  
5 renewable sources of generation in New England.

6 But the most reprehensible claim in this  
7 proceeding was made by Clean Power Development itself.  
8 Clean Power Development has made the allegation that PSNH  
9 has engaged in felony misconduct. Chairman Getz, you  
10 picked up on this very allegation this morning. This  
11 libelous statement was made in Clean Power Development's  
12 May 1, 2009 filing with this Commission. PSNH, nor any  
13 other entity in this state, should be forced to deal with  
14 another party that has alleged that it is a criminal  
15 felon.

16 In today's electric market, contracts  
17 are made between willing buyers and willing sellers. Such  
18 arrangements are founded upon an expectation of good faith  
19 and fair dealings between parties. The obligation of good  
20 faith is not demonstrated by a party that uses defamation,  
21 complaints, and constant litigation. The long-term  
22 contracts that these complainants seek are just that,  
23 long-term. We must trust the party across the table from  
24 us, lest we open up a door for new protracted litigation.

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1 Just five days ago, PSNH filed a brief in the New  
2 Hampshire Supreme Court regarding a long-term power  
3 purchase agreement entered into in 1982. Thirty years  
4 from now, we don't want to be facing litigation as a  
5 result of deals made today.

6 PSNH has no legal obligation to enter  
7 into a long-term power purchase agreement with any  
8 developer. The Legislature rejected that policy. We do  
9 not desire to enter into a long-term relationship with any  
10 party that uses litigation, baseless and liable  
11 accusations of criminal wrongdoing as coercion.

12 As you noted and as your question was  
13 directed towards, Mr. Chairman, in the order of notice  
14 calling for today's hearing, the Commission noted that the  
15 purpose of the proceeding was to look into the nature and  
16 extent of PSNH's legal obligation to purchase power from  
17 Clean Power Development.

18 Just two years ago, the Legislature  
19 enacted the state's Renewable Portfolio Standard law,  
20 codified as RSA Chapter 362-F. In that law, the  
21 Legislature set certain percentage requirements for  
22 renewable energy that must be included in the energy sold  
23 to most, but not all, of the state's citizens. That law  
24 includes a specific section concerning power purchase

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1 agreements. Indeed, RSA 362-F:9 is captioned "Purchased  
2 Power Agreements". That statute begins as follows: Upon  
3 the request of one or more electric distribution companies  
4 and after notice and hearing, the commission may authorize  
5 such company or companies to enter into multi-year  
6 purchase agreements with renewable energy sources for  
7 certificates, in conjunction with or independent of  
8 purchased power [arrangements] from such resources, to  
9 meet reasonably projected renewable portfolio [standards]  
10 and default service needs to the extent of such  
11 requirements, if it finds such agreements or such an  
12 approach, as may be conditioned by the commission, to be  
13 in the public interest."

14 Note how this Legislature started this  
15 section: "Upon the request of one or more electric  
16 distribution companies". Long-term contracts, like the  
17 ones demanded in this proceeding, are clearly not mandated  
18 by law. They only occur "upon the request of one or more  
19 electric distribution companies". That's the policy  
20 established by the Legislature; that's the policy which  
21 PSNH is following today.

22 If PSNH enters into any new long-term  
23 power purchase agreement with any renewable generator, it  
24 will file an application with this Commission for review

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1 and approval of that agreement under the law. As I said,  
2 RSA 362-F governs the very process that is the subject of  
3 today's complaint investigation. Even the Consumer  
4 Advocate just noted that there is no requirement under  
5 362-F for a utility to enter into a long-term contract  
6 with a renewable developer. The law sets forth what is  
7 required and when it is required.

8 In conclusion, PSNH has cooperated with  
9 the Commission since the inception of this docket. And, I  
10 will end by repeating what I had previously filed with the  
11 Commission half a year ago in this docket: There is no  
12 requirement in New Hampshire for any market participant,  
13 be it a utility, an unregulated marketer, or an end-user,  
14 to enter into a long-term power purchase agreement with  
15 any merchant generator. PSNH urges the Commission to see  
16 the CPD complaint for what it is: An attempt by a  
17 disappointed and disgruntled merchant generator to force  
18 its output on an unwilling buyer. If CPD Berlin truly has  
19 an economic product, someone in the marketplace will reach  
20 an accord with CPD; if not, PSNH should not be forced to  
21 be the buyer-of-last-resort.

22 We thank the Commission for considering  
23 our statement here today, and we urge the Commission to  
24 expeditiously close this matter. And, if you have any

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1 questions, I will respond.

2 CHAIRMAN GETZ: Well, let's at least  
3 just go back to the, I don't know if my colleagues have  
4 any questions, but the distinction you make that there's  
5 not a legal duty to consider bona fide requests, but it's  
6 a good business practice, is that --

7 MR. BERSAK: Yes. Yes. The law says  
8 what's required. The law says that a electric  
9 distribution utility "may bring a contract before the  
10 Commission for review and approval", not that it has to.  
11 We could do something akin to what Unitil has just been  
12 approved to do, go out on a year-by-year basis, to acquire  
13 renewable energy certificates to meet the Renewable  
14 Portfolio Standard needs of the company. That would do  
15 nothing to support the development of a renewable  
16 generation industry in New Hampshire. The developers  
17 would not be able and will not be able to use Unitil's  
18 purchases to help them build their plants. To the extent  
19 that Unitil has been given the authority to do that, that  
20 is procure RECs on a year-by-year basis, PSNH could do the  
21 same thing, and then there would be no plants that move  
22 forward in this state.

23 CHAIRMAN GETZ: When we come to an  
24 annual Default Energy Service rate proceeding, when we're

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1 looking at the justness and reasonableness of the rates at  
2 that time and how you procured your generation needs  
3 outside of your own, would that be a time for looking at  
4 these issues or would that be -- how you procured, would  
5 that be an issue within the scope of that kind of  
6 proceeding, to look at what you've -- how you conducted  
7 yourself?

8 MR. BERSAK: If you're talking about a  
9 long-term purchase obligation or a long-term purchase  
10 power agreement with a renewable developer, that's  
11 governed by 362-F, I guess 362-F:9 specifically details  
12 the process for doing that. If you're talking about other  
13 kinds of agreements for the procurement of power, then I  
14 would suppose that an Energy Service rate setting  
15 proceeding would be an appropriate time to look at things  
16 that are done outside of the long-term purview.

17 CMSR. BELOW: Are you suggesting that  
18 362-F operates to the exclusion of the least cost planning  
19 statutes?

20 MR. BERSAK: No, no, no. Not at all.  
21 No, I think what Chairman Getz was asking about was our  
22 periodic Default Energy Service reconciliation dockets, he  
23 was asking whether that's an appropriate proceeding for  
24 the Commission to look at power purchase requirements.

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1 You're turning to, I think, Commissioner Below, to "what  
2 is the requirement under the least cost resource planning  
3 docket and, you know, or statute, and has PSNH complied  
4 with what was approved in our last plan?" Mr. Rodier  
5 brought up earlier that it seems that we're deviating from  
6 what was agreed to and what was written and approved by  
7 the Commission in the last least cost resource plan.

8 We have to take a look at some, you  
9 know, a snapshot of the calendar, if we're going to take  
10 -- be speaking about PSNH's most recent Least Cost Plan.  
11 That plan was filed in September of 2007, I believe, which  
12 means it was being developed in the months leading up to  
13 September 2007. Since that time, Dow Jones Industrial  
14 Average lost roughly half its value. The state is in a  
15 budget crisis. Businesses have closed up, moved out of  
16 state, and they have reduced their energy usage.  
17 Customers have increased conservation and decreased their  
18 usage, the ones that remain here. Competitive suppliers  
19 have been more successful in gaining customers. There has  
20 been a significant change to competitive suppliers over  
21 the so-called "load migration". And, energy prices have  
22 somewhat of an inversion between coal, gas, and oil that  
23 we don't normally see. To say that "well, you said this  
24 back in September of 2007, so you have to live up to it",

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1 in light of the dynamic and changing economic situation  
2 which the Company and the state finds itself in is just  
3 not reasonable. Our needs have changed drastically since  
4 the plan was put together in the middle of September 2007.

5 The reason why we have to file a plan  
6 biennially is, you know, at least my understanding is, is  
7 because it's a dynamic situation and because there are  
8 changes that have to be reflected periodically as to what  
9 reality and what the business world and what the economy  
10 brings to us, and what's in the best interest of our  
11 customers.

12 CHAIRMAN GETZ: Let me just return again  
13 to try to make sure I understand --

14 MR. BERSAK: Yes, sir.

15 CHAIRMAN GETZ: -- the arguments. And,  
16 I don't want to confuse, you know, forums for deciding the  
17 issues, but I think we need to look at some of the  
18 sources. And, if I'm going to -- if we're going to look  
19 at whether your rates are just and reasonable, if we're  
20 going to look at under the -- whether the system under the  
21 least cost planning process is adequate, it seems that the  
22 argument is that that gives rise to this duty that you're  
23 recognizing as a good business practice, but you draw the  
24 line at considering it a legal duty. And, I'm having

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1 trouble seeing that clear delineation. If we're going to  
2 be getting to the point of someday making conclusions  
3 about just and reasonable rates or whether a process is  
4 adequate, it seems like you're saying that you can  
5 basically, as a legal -- as a business matter, you'll give  
6 due consideration to any bona fide offer. But, as a legal  
7 matter, you don't have to give due consideration to bona  
8 fide offers.

9 MR. BERSAK: Sure. Perhaps if we move  
10 away from power purchase agreements, move to something  
11 else. We buy lots of things. Suppose we're talking about  
12 a bucket truck. Is it required for us to look at every  
13 manufacturer of bucket truck in the -- you know, across  
14 the globe as a legal obligation, before we can come to  
15 this Commission and say "we bought a bucket truck and we  
16 want to include it in our rate base." And, is some bucket  
17 truck manufacturer going to show up and say "Well, they  
18 didn't look at mine. I'm going to file a complaint  
19 against them, because they didn't look at mine. Mine  
20 might have been more economical."

21 CHAIRMAN GETZ: So, is it a timing issue  
22 then that it's more -- and your position is, after the  
23 fact, we could conclude that the expense for the bucket  
24 truck was unreasonable, because you just -- you picked one

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1 vendor and paid them more than the going market, is that  
2 the --

3 MR. BERSAK: The question is, "Did we  
4 use a reasonable business process in choosing, you know,  
5 the place where we were going to spend our money or spend  
6 customers' money? Did we use a process that makes logical  
7 sense?" Not everything requires a competitive process.  
8 If you're going to go buy a house, you're not going to go  
9 and use a competitive process, saying "I want to buy a  
10 house. Everybody give me your best offer. And, I want a  
11 house that's got a front door and a garage." No, there  
12 are certain things, certain attributes you'd be looking  
13 at. If you're going to buy a car, you're not going to use  
14 an auction process. You're going to negotiate the best  
15 deal that you can.

16 PSNH is looking at the opportunities  
17 that it has before it, at any particular given time,  
18 looking at what the needs are based upon the circumstances  
19 that it faces, you know, at that point in time, and tries  
20 to develop a relationship with a trustworthy party that it  
21 can do business with for a -- on a long-term basis.  
22 Ultimately, any agreement we enter into will have to come  
23 before this Commission for review, assuming it's a  
24 long-term agreement. If this Commission finds, for

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1       whatever reason, that that agreement is not in the best  
2       interest of customers, then that agreement will go away.  
3       It will not be of any harm, will not be of any value, will  
4       not have any impact whatsoever on customers.

5                       So, under the law as the Legislature  
6       enacted two years ago, the Renewable Portfolio Standard,  
7       when it talked about the process for power purchase  
8       agreements, the Legislature set up that process of  
9       bringing contracts to this Commission for review and  
10      approval. And, that's exactly what we do.

11                      CHAIRMAN GETZ: Commissioner Ignatius.

12                      CMSR. IGNATIUS: Thank you. Mr. Bersak,  
13      sticking with where you just were on describing what you  
14      would say is a duty on the part of the utility to have a  
15      reasonable business process for the decisions it makes,  
16      describe for us what the business process is in  
17      procurement of power from a merchant plant?

18                      MR. BERSAK: When you're talking about  
19      procurement from renewable developers, such as the ones  
20      that are before the Commission in this proceeding today,  
21      we have, as you know, people within the Company who have  
22      expertise in the generation business. People who have  
23      been running generating plants for many, many years.  
24      People who have expertise in fuel procurement. People who

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1 are experts in forestry, people with environmental  
2 backgrounds. We have people, such as Mr. Hall, who is  
3 with me today, who look, you know, into the future as to  
4 what might our needs be, what are the regulatory  
5 requirements of this Commission. We have my colleagues in  
6 my office that look at the legal requirements, both on the  
7 state and federal level, as to what's required of us.

8                   When we get a proposal in, not every  
9 proposal that comes in is fungible. They're all  
10 different. We have a 29 megawatt wood plant up in the  
11 North Country. We have a 17 megawatt wood plant in  
12 Concord that's going to be used for central district  
13 heating. We may have a wind project in the North Country.  
14 We may have a biomass. They're all different. They're  
15 all in different parts of the state. They all use  
16 different fuel resources. They all have different impacts  
17 on various public policies.

18                   So, we just can't say that they're all  
19 the same. We have to take these projects, these proposals  
20 that come in, and look at them. Clearly, one of the most  
21 important aspects that we look at is economic. Because  
22 we're trying to do this in a way that furthers the  
23 economic interests of the customers, and at the same time  
24 providing safe and reliable electricity, and at the same

1 time dealing with all of the myriad other public policy  
2 interests that have been put upon us and this Commission  
3 in this area.

4 So, it truly is a business judgment,  
5 using the expertise of the people in our company, to  
6 determine which of these looks like it has the best fit  
7 for our needs and our customer needs going forward.

8 CMSR. IGNATIUS: And, in this instance,  
9 did all of those experts in forestry and rates and fuels  
10 and economic forecasting evaluate the CPD plant?

11 MR. BERSAK: To the best of my  
12 knowledge, the people in the company have confidence that  
13 if either of these plants were built, that either one of  
14 them could probably survive. We made no discussion with  
15 respect to, "if both of them went on line, would they both  
16 survive?" I don't know about that. But we were, in fact,  
17 reviewing a bona fide offer that Clean Power Development  
18 gave to us. In the midst of that review process, Clean  
19 Power chose to file or renew its complaint against us at  
20 this Commission. That's after filing an earlier  
21 complaint, after calling us "felons". At that point, we  
22 just said "we don't really wish to pursue this business  
23 relationship any further."

24 CMSR. IGNATIUS: Let me ask you another

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1 question. You had said earlier that, in response to the  
2 allegation that "PSNH was acting in its self-interest",  
3 you posed the question to yourself "is that meaning as it  
4 relates to customers?", your customers. And, "if that's  
5 the case, then the answer is "yes"."

6 MR. BERSAK: Correct.

7 CMSR. IGNATIUS: Can you explain that  
8 further please?

9 MR. BERSAK: Sure. When we review  
10 these, as I just discussed, you know, when we review these  
11 deals, during the review process the most important thing  
12 is the public interest of the customer. That's what the  
13 statute requires. When we bring an agreement to this  
14 Commission under 362-F:9, that's the standard this  
15 Commission has to use to determine whether a contract will  
16 be accepted or not. So, when we're looking at a contract,  
17 we always have to be looking towards the end game of, "if  
18 we enter into this, when we bring it to this Commission,  
19 will it be approved?" So, we have to look at the interest  
20 of customers.

21 And, as I stated, when we enter into  
22 these power purchase agreements, they're not rate based.  
23 You know, our profit, the profit that goes to the  
24 shareholder gets dividended up to the parent company, that

1 comes from a return on our investments. Since we will  
2 have nothing invested in these plants, we don't make a  
3 penny of profit. This is done on behalf of our customers  
4 in the best, you know, trying to use the best information  
5 and the best talent that we have on our staff to determine  
6 what will meet their needs.

7 CMSR. IGNATIUS: But I guess I -- maybe  
8 I misunderstood. I thought you were saying that it was --  
9 you had concluded it was not in the interest of your  
10 customers to negotiate with Clean Power Development?

11 MR. BERSAK: Yes. Because one of the  
12 foundations that we needed is a trustworthy negotiating  
13 partner.

14 CMSR. IGNATIUS: So, it's not an  
15 economic issue, it was --

16 MR. BERSAK: It is economic. As I said,  
17 we're still dealing with legacy issues from twenty years  
18 ago in the Supreme Court today. We have to have a feeling  
19 that, when we make a deal, it is a deal, and that we have  
20 a willing and ready, good faith negotiating partner across  
21 the table from us.

22 CMSR. IGNATIUS: And, the decision to  
23 enter into what people are describing as a "20 year  
24 contract" with Laidlaw, doesn't raise for you those

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1 concerns about -- that you described of the burdens of  
2 long-term purchase power agreements?

3 MR. BERSAK: Any agreement that we enter  
4 into, you know, will have its risks. But, number one, let  
5 me clear up what I think is a huge misunderstanding,  
6 misconception, unfortunate way things play out in the  
7 newspaper. The status of PSNH's relationship with  
8 Laidlaw: We have no contract with Laidlaw. Therefore, an  
9 agreement to buy at 95 percent of the contract is  
10 interesting. There is no contract with Laidlaw. Are we  
11 negotiating with Laidlaw? Yes, we are. Did we have a --  
12 and I guess you could call it a "term sheet" with them?  
13 Yes. We weren't going to enter into long-term  
14 negotiations with anybody for anything, whether it's a  
15 power purchase agreement or whether it's a scrubber or  
16 something, unless we have some kind of a basis for those  
17 negotiations to, you know, the framework of it. But it's  
18 not a deal, it's a term sheet. It's an understanding.  
19 Unless and until we reach agreement with Laidlaw, there is  
20 no contract. Any such contract that may ultimately be  
21 agreed upon would certainly be subject to various  
22 conditions, including, number one, that they get the  
23 permitting and everything that's necessary to build their  
24 plant, and, number two, this Commission's approval of the

1 deal.

2 So, you know, to the extent that people  
3 are comparing it to the "Laidlaw deal", the Laidlaw deal  
4 is, I guess, a twinkle in Laidlaw's eyes at this point.  
5 But, you know, we continue to negotiate. And, will we  
6 reach a deal? If both parties can, yes; if not, then, no.

7 CHAIRMAN GETZ: So, it's entirely at  
8 PSNH's discretion whether to execute a final contract?

9 MR. BERSAK: Well, I think Laidlaw has a  
10 say in this also. But, you know, to the extent that we  
11 have a willing buyer and a willing seller, we could sign  
12 into it. But, as I said, it will be an executory contract  
13 at that point, because there will be conditions precedent  
14 to it before it actually becomes effective. And, those  
15 conditions would be things such as gaining the permits  
16 that are necessary, whether it be from the Site Evaluation  
17 Committee or elsewhere, and this Commission's approval.

18 So, until those conditions would be met  
19 in any such contract, whether it was with Laidlaw, whether  
20 it was with Clean Power Development or whether it was  
21 Concord Steam, or any one of a number of other developers  
22 --

23 CHAIRMAN GETZ: Well, I guess my point  
24 was, it wasn't set up such that, if, by this term sheet,

1       it wasn't set up such that, if Laidlaw could meet specific  
2       conditions, then PSNH was required to enter into a  
3       contract?

4                       MR. BERSAK:  No.  There are still  
5       material terms, such as price, that we're negotiating.  
6       Material terms, you know, such as -- I'm trying to think,  
7       I'm not directly involved in those negotiations.  But, you  
8       know, there are a term sheet, but that might be the easy  
9       part.  The hard part is, you know, the devils are in the  
10      details, and these details have been going on for two  
11      years now.

12                      CHAIRMAN GETZ:  Is there any  
13      understanding or anything in writing that would suggest  
14      that this is an exclusive arrangement between PSNH --

15                      MR. BERSAK:  No.

16                      CHAIRMAN GETZ:  -- and Laidlaw, that  
17      PSNH would not be negotiating with others?

18                      MR. BERSAK:  No, there is not.  But,  
19      clearly, to the extent that we have a expectation that we  
20      may get energy and RECs from a particular producer, that  
21      would impact what our needs are going forward.  You know,  
22      we're not going to buy from a thousand renewable energy  
23      producers all because they happen to build, we don't need  
24      it, our customers don't need the power.  So, everything --

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1       though, it is very dynamic, and one thing will effect  
2       others, absolutely.

3                       CHAIRMAN GETZ:   Commissioner Ignatius.

4                       CMSR. IGNATIUS:   One other area I wanted  
5       to pursue.  You heard Mr. Patch's description of how he  
6       reads the current PURPA provision, --

7                       MR. BERSAK:   Yes, ma'am.

8                       CMSR. IGNATIUS:   -- even after the  
9       changes in federal law.  Do you disagree with his analysis  
10      of what those remaining sections of PURPA call for?

11                      MR. BERSAK:   To some extent, I do  
12      disagree.  As part of the Energy Policy Act of 2005, the  
13      Congress changed PURPA such that the absolute mandates  
14      that utilities purchase was lifted.  And, FERC implemented  
15      those changes by putting in regulations that indicate  
16      that, in certain parts of the country, where there's open  
17      access to transmission and where barriers to developers  
18      gaining access to the transmission system and being able  
19      to compete, where those barriers have disappeared, that  
20      they will specifically end the PURPA purchase mandates.  
21      One of the areas which they cited, they being FERC, cited  
22      in its regulations was NEPOOL.  Because New England has an  
23      open access system, and this is one of the areas where, if  
24      a utility comes to us seeking a waiver from the purchase

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1 requirements of PURPA, we will grant it.

2 Attorney Patch read some things with  
3 respect to a 20 megawatt threshold and rebuttable  
4 presumptions, and I believe those are all correct. I  
5 haven't read PURPA recently, but I -- vaguely I recall  
6 that there are those limitations in the new PURPA regs  
7 implemented by FERC. However, it's just that, a  
8 rebuttable presumption. Has PSNH or Northeast Utilities  
9 gone to FERC to seek an express waiver from the PURPA  
10 purchase requirement? No, we have not. We do not feel  
11 that it was necessary to do so, because, as part of the  
12 restructuring process for PSNH, in the Restructuring  
13 Settlement Agreement, this Commission agreed to a price  
14 that would be paid for PURPA purchases going forward; and  
15 that is basically the market price, minus an  
16 administrative fee.

17 To the extent that PSNH was required to  
18 purchase at that price that was agreed upon by the  
19 Commission set forth in the Restructuring Settlement, it  
20 has no harm one way or the other towards PSNH's customers.  
21 We are always in the market at the margin. To the extent  
22 that we have to buy power at the market, and we can sell  
23 it back into the market, customers aren't harmed. So, we  
24 saw no need to go to the expense and time necessary to

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1 make a FERC filing to get an express waiver of ongoing  
2 PURPA purchase requirements.

3                   However, now, if developers in New  
4 Hampshire are now seeking to implement PURPA rights that  
5 they believe that they have in a manner different than  
6 that which was agreed upon in their settling -- I mean, in  
7 the Restructuring Settlement Agreement and approved by  
8 this Commission, and if they choose to ignore the host  
9 utility and jump back to PSNH, then we'll return to the  
10 wild, wild days of the 1980's, and we'll be fighting PURPA  
11 all over again. And, we will go to FERC and we will make  
12 a filing, and it will be years of delay while it gets  
13 decided.

14                   CHAIRMAN GETZ: All right. I think  
15 that's all for now. Thank you, Mr. Bersak.

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

18                   CHAIRMAN GETZ: I think, at a minimum,  
19 we need to give Mr. Patnaude ten minutes, because I think  
20 we have some additional time. We want to hear from Mr.  
21 Rodier again and any response rebuttal. And, we want to  
22 deal with the intervention issues, and then move onto some  
23 of the procedural issues. And, note that, to the extent I  
24 didn't cover this earlier, this prehearing conference is

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1 different from prehearing conferences in a typical case,  
2 because we have to make a threshold decision on whether  
3 the complaint may warrant further action. And, so, I  
4 think we have some -- a number of issues we have to deal  
5 with today, and we'll see how far we can get, in terms of  
6 whether we actually make that determination today or if we  
7 come to some agreement about what procedures should be  
8 adopted going forward.

9 But let's recess and resume at 12:15.  
10 Thank you.

11 (Whereupon a recess was taken at 12:03  
12 p.m. and the prehearing conference  
13 resumed at 12:30 p.m.)

14 CHAIRMAN GETZ: Okay. Mr. Rodier.

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

16 I'm going to try to be brief. Number one, one through  
17 five, number one is "twinkle in the eye of Laidlaw".  
18 September 29th press release issued from Manchester  
19 announces that "Laidlaw has reached agreement with PSNH on  
20 the material terms of a contemplated 20 year power  
21 purchase agreement." This was released to the financial  
22 community. Gary Long is quoted in that press release.  
23 Later in the day, a PSNH spokesperson, "With this  
24 announcement, they're", "they", that's Laidlaw, "are able

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1 to demonstrate to our audiences that they have an  
2 agreement with a known entity in the state."

3                   Number two: "The requirement under  
4 PURPA". Now, that has been denied repeatedly, although I  
5 have said we were careful not to raise it in our  
6 complaint, has nevertheless been the centerpiece of all of  
7 PSNH's denial to CPD. Now, we hear for the first time  
8 that they have failed to file for the waiver or exemption.  
9 All -- for all these years, they have been telling  
10 developers they had no obligation here other than to pay  
11 the short-term rates. And, we understand what the  
12 Company's tariff is, we understand what the Commission  
13 approved in DE 099 [99-099?]. We're talking about the  
14 federal law here that they must comply with. They have  
15 not complied with the federal law, and I believe we  
16 finally got the concession on that here today.

17                   With respect to number three, there was  
18 a discussion of the fact that CPD filed a motion to  
19 commence this proceeding on September 14th, and they were  
20 in the midst of their evaluation. Our information at the  
21 time was that they had determined that they were not going  
22 to consider Laidlaw, and that is why, that was our  
23 information, that is why we filed that motion.

24                   MR. LISTON: Not going to consider Clean  
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1 Power.

2 CMSR. IGNATIUS: Mr. Rodier, did you  
3 mean "failed to consider Clean Power"?

4 MR. RODIER: I'm sorry. Not going to  
5 consider Clean Power. That's why we filed it. We also  
6 felt that, you know, after all the time that had gone by,  
7 that it was just time to try to move things forward. But,  
8 certainly, if we felt, if we had any information at all --  
9 yes, this was filed on August 1st. Let me just say this,  
10 Mr. Chairman. It was a pretty complex proposal. There  
11 was never even one call from Public Service for any  
12 clarification whatsoever. Normally, that's how things get  
13 evaluated.

14 Did I interrupt you? I'm sorry.

15 CHAIRMAN GETZ: Well, I'm just trying to  
16 understand. You said "it was your understanding" or "it  
17 was Clean Power's understanding that PSNH was not going to  
18 consider the offer." I mean, what's the basis for that  
19 understanding?

20 MR. RODIER: I don't want to respond to  
21 that question, Mr. Chairman. I don't know whether I'm at  
22 liberty to. I'd be happy to do it, you know, in camera or  
23 something like that.

24 CHAIRMAN GETZ: Okay.

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1 MR. RODIER: All right?

2 CHAIRMAN GETZ: Well, we'll put that  
3 aside for the moment.

4 MR. RODIER: Okay. Thank you. That was  
5 our understanding. And, we have other people here that  
6 have first person knowledge of that, okay?

7 Number four: "Felony misconduct". What  
8 we did, all we did, really, in the complaint is we said  
9 that what they had been telling the Commission that they  
10 deal openly and above board with everybody, no matter who  
11 they are, that that's totally inconsistent with what the  
12 senior governmental representative told Laidlaw. And,  
13 they never denied it. It was Count 1 of the complaint.  
14 Now, they're saying "Oh, oh. Felony misconduct." Well,  
15 all we're doing is calling that to the attention of the  
16 Commission, because that's really at the heart of our  
17 case. Okay? So, they never, never denied it, never  
18 addressed it. If this was a court of law, it would be  
19 conceded and admitted. That's our response.

20 CMSR. BELOW: Excuse me. Are you  
21 referring to your assertion, I had my fingers on it  
22 earlier, your assertion in your original complaint about  
23 statements that were made with regard to Mr. Liston that  
24 you put in quotations in your complaint? Is that what

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1 you're referring to?

2 CHAIRMAN GETZ: Yes.

3 MR. RODIER: Correct.

4 CHAIRMAN GETZ: I guess I'm confused  
5 between whether this is the conspiracy issue or the --

6 MR. RODIER: The candor issue. It's the  
7 candor issue. Certainly, to say we've accused them of  
8 "felony misconduct" I think is a huge exaggeration.

9 Then, finally, the thing is, they --  
10 Public Service, they want a trust -- oh, you want a  
11 trustworthy partner, somehow they can't trust Mel. He's  
12 stirring up all of this raucous, he's filing complaints  
13 and things like that. Well, we were still making nice  
14 with Public Service in March of '09, when their senior  
15 governmental representative said "No way. We're never  
16 doing business with Mel. He's a bad person." Okay? That  
17 has nothing to do with the subsequent things that are  
18 happening, that now Public Service is trying to turn  
19 around and blame Clean Power Development for the failure  
20 to do something more here. As a matter of fact, that  
21 reinforces our complaint. That's what our complaint is  
22 all about. It's just a total slap of the hand to Clean  
23 Power's efforts to try to get a discussion going. Thank  
24 you.

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1                   CHAIRMAN GETZ: Let me just follow up on  
2 one thing.

3                   MR. RODIER: Sure.

4                   CHAIRMAN GETZ: I want to turn to Mr.  
5 Bersak. I think it was Issue Number 2, on the PURPA  
6 obligation, to make sure I understand what the debate here  
7 is. Because I was wondering, when you were speaking  
8 earlier to the PURPA issue, Mr. Bersak, whether your  
9 position was that you felt the presumption was so easily  
10 rebutted that you didn't need to go to FERC? Or, let me  
11 just -- I'll give you an opportunity to respond to the  
12 PURPA issue, and, then, of course, Mr. Rodier, you'll have  
13 the last opportunity on that issue.

14                  MR. RODIER: Right.

15                  MR. BERSAK: I think that the question  
16 that you have is "what does PSNH feel that its  
17 responsibilities under PURPA are at this point?" We've  
18 always felt that we have an obligation to purchase from  
19 qualifying facilities under PURPA at the short-term rate  
20 that this Commission approved as part of the Restructuring  
21 Settlement. We never felt that we had any obligation to  
22 enter into new long-term type of arrangements, that that  
23 was off the table.

24                  We didn't feel that it was necessary for

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1 us to go seek a waiver from any and all PURPA  
2 requirements, because, number one, that would be, you  
3 know, when we checked into it, it would be a costly and  
4 complex filing with FERC that we felt was unnecessary.  
5 Since we were willing to accept our short-term purchase  
6 obligation that we saw out there, there was no need for us  
7 to spend time at FERC. Nothing nefarious was done. To  
8 the extent that, you know, anybody thinks that we were  
9 hiding the fact that we didn't go to FERC, the FERC  
10 process is open. We never said that we had gone, we never  
11 said that we hadn't.

12 But, to the extent that developers now  
13 want to come to this Commission to set new long-term rates  
14 for us, at that point, that would require us, on behalf of  
15 customers, to go to FERC and start the process of seeking  
16 the waiver, because we certainly do not want to be the  
17 recipient of more long-term PURPA obligations.

18 Did that answer your question, Mr.  
19 Chairman?

20 CHAIRMAN GETZ: Well, I want to hear  
21 from Mr. Rodier. Do you have anything in response to that  
22 or --

23 MR. RODIER: Well, yes. There's a  
24 long-term PURPA obligation, and there are these rebuttable

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1       presumptions you heard about. They're required to go in  
2       and get a waiver. Those are like a preliminary finding.  
3       If they really want to get out of their long-term  
4       obligations, they got to go in and ask for the exemption.  
5       That much is clear. They didn't do it.

6                       CHAIRMAN GETZ: Okay.

7                       MR. RODIER: Thank you.

8                       CHAIRMAN GETZ: All right. Thank you.  
9       Anything else from the Bench? Okay. Well, let's -- I  
10      think, at this point, we're going to move onto the issues  
11      of intervention. And, I had planned to and I guess I will  
12      go forward with describing the intervention process.  
13      Unfortunately, the large majority of the individuals who  
14      moved to intervene are not here. And, part of the reason  
15      for at least addressing in some detail what intervention  
16      is and what the options are for participation in PUC  
17      proceedings was going to be addressed, because it's our  
18      experience that there is sometime some confusion about  
19      what "intervention" means and what parties' options are.

20                      But let me start with referring to the  
21      statute 541-A:32, provides, and I'm not going to read this  
22      in its entirety, but just some relevant pieces of the  
23      statute. But that "the presiding officer shall grant one  
24      or more petitions for intervene if the petition states

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1 facts demonstrating that the petitioner's rights, duties,  
2 privileges, immunities or other substantial interests may  
3 be affected by the proceeding", and "the presiding officer  
4 determines that the interest of justice and the orderly  
5 and prompt conduct of the proceedings would not be  
6 impaired by allowing the intervention. If a petitioner  
7 qualifies for intervention, the presiding officer may  
8 impose conditions upon the intervenor's participation in  
9 the proceedings, either at the time that intervention is  
10 granted or at any subsequent time. Such conditions may  
11 include, but are not limited to, limitation of the  
12 intervenor's participation to designated issues,  
13 limitation of the use of cross-examination or other  
14 procedures, or requiring two or more intervenors to  
15 combine their participation."

16 And, I'll go first to the issue of  
17 whether a person qualifies. And, the statute speaks to  
18 "rights, duties, privileges, immunities or other  
19 substantial interests that may be affected by the  
20 proceeding". Merely being interested in or concerned with  
21 a proceeding is not a recognizable legal basis for  
22 intervention. There has to be a substantial interest that  
23 "may be affected by the proceeding."

24 On the other hand, as I noted earlier,  
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1 under our rules, Puc 203.18, "persons who do not have  
2 intervenor status in a proceeding, but having interest in  
3 the subject matter shall be provided with an opportunity  
4 at a hearing or prehearing conference to state their  
5 position." And, we've also had a couple of parties send  
6 in letters asking that they be on the service list as well  
7 for this proceeding.

8 So, there is a range of opportunities  
9 for participation. On the one extreme is full party, with  
10 the opportunity to do discovery, file testimony, and  
11 conduct cross-examination, even though we do have the  
12 authority under the statute to combine parties who would  
13 be pursuing some of those alternatives. On the other end  
14 of the spectrum is anybody can ask to be put on the  
15 service list and receive all of the filings in the  
16 proceeding. And, of course, anyone can make a public  
17 comment. It does not have the -- it is not accorded the  
18 same weight as testimony in a proceeding, but is similar  
19 to argument.

20 So, it's not clear, because they're --  
21 so many of these individuals are not here, what they had  
22 hoped to pursue as a matter of their participation. But,  
23 with that background, I guess at this point I would turn  
24 to Mr. Bersak to see if you have any objections to any of

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1 the Petitions to Intervene? Now, before you go, I'm  
2 assuming there's no -- there's no objections by the  
3 complainant, is that correct?

4 MR. RODIER: Well, I'd like to just give  
5 you ten words as to why, if I might? Well, the reason  
6 why, Mr. Chairman, is we feel, in addition to the  
7 "cognizable interest" test that you said, we believe  
8 there's also the "public interest" test. For an example  
9 of that, you can look at PSNH's motion to object to the  
10 participation of CLF as an intervenor in the financing  
11 hearing. They said there's a two-prong test; cognizable  
12 interest, and then, beyond that, the Commission can still  
13 let anybody in, if they think that this person -- that it  
14 would be in the public interest, in other words, they're  
15 bringing something to the table. The Site Evaluation  
16 Committee, Mr. Chairman, I believe uses that same  
17 framework, "public" -- in other words, the "public  
18 interest" option, in allowing intervention before Site  
19 Evaluation Committee -- Commission hearings.

20 So, we would say, certainly, a State  
21 Rep. that's interested in these matters, and, like you  
22 said, they couldn't be here because of an election,  
23 certainly would be in the public interest to allow them to  
24 come in. I doubt if they're going to do any cross or put

1 in any testimony. But, if they want to be parties, I  
2 would just suggest that the Commission agrees with my  
3 analysis of the law to let them in. And, that's our  
4 position.

5 CHAIRMAN GETZ: Well, just to make sure  
6 it's clear for the record.

7 MR. RODIER: Yes.

8 CHAIRMAN GETZ: There's -- it's a number  
9 of State Reps, but there's also other parties, the Town of  
10 Winchester, Mr. Edwards, and the Carbon Action Alliance,  
11 who are in the same position. They filed Petitions to  
12 Intervene, but they're not here today to respond.

13 MR. RODIER: Right. But Winchester is a  
14 ratepayer and Edwards is a ratepayer. So, I think they  
15 kind of come in pretty easily as ratepayers. So, we  
16 certainly would have no objection to them.

17 CHAIRMAN GETZ: Okay. Mr. Bersak, do  
18 you have any --

19 MR. BERSAK: Yes, Mr. Chairman. At this  
20 stage, this proceeding is not an adjudicative proceeding.  
21 It's a process to determine whether there should be some  
22 kind of proceeding going forward. Depending upon what  
23 this Commission does will determine upon what interests  
24 and privileges and responsibilities may be affected. At

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1 this point, given the state of the proceedings as they are  
2 today, we take no position on any of the requests for  
3 intervention. However, should the Commission decide that  
4 an adjudicative proceeding is required, then we'll have to  
5 take a look at what the issues are that are included in  
6 the order of notice for that proceeding, to determine  
7 whether these parties that wish to intervene in the  
8 process have an interest that would allow them intervenor  
9 status. And, whether there are other parties, such as the  
10 other electric distribution entities in the state that  
11 need to be mandatory parties, for example, if this becomes  
12 a PURPA process.

13 So, right now, as I said, we'll take no  
14 position on the intervention, given the status of this  
15 proceeding at this time.

16 CHAIRMAN GETZ: Okay. Thank you.

17 (Chairman and Commissioners conferring.)

18 CHAIRMAN GETZ: All right. Well, Mr.  
19 Bersak, your comments, you know, bring to the fore the  
20 threshold decision I mentioned before at the recess, and  
21 which is that, under Section 204.05, "the Commission shall  
22 commence an adjudicative proceeding to resolve a complaint  
23 when it determines that the complaint may warrant further  
24 action." And, we find that further action is warranted.

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1 That there are issues, legal issues that need to be  
2 explored, in order to determine what the duty owed is, and  
3 that we also are going to need to address then, because  
4 there's not only a dispute about the law, there's a  
5 dispute about the facts, and whether that duty was  
6 breached in this instance.

7 So, which I guess then brings us to the  
8 issue of procedure that's raised by your comments. I  
9 guess your contemplation of procedure then, Mr. Bersak, I  
10 take it is that there would be an order of notice  
11 beginning an adjudicative proceeding, and at which we  
12 would have --

13 MR. BERSAK: I believe so. I don't have  
14 the rules or the statute in front of me, but I believe  
15 that such an order is required for an adjudicative  
16 proceeding. That needs to be published, we need to go  
17 through the process from the start, so that other parties  
18 who may be interested, and what ever the issues that the  
19 Commission deems that are part of that proceeding, that  
20 other parties are aware of it and have the opportunity to  
21 intervene.

22 CHAIRMAN GETZ: Well, I guess my initial  
23 thought, without going back through the statute, is that  
24 the notice and opportunity to intervene has already been

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1 accomplished --

2 MR. BERSAK: Perhaps.

3 CHAIRMAN GETZ: -- by the order of  
4 notice that was, you know, issued on October 9th. But it  
5 does then bring us to the issue of, you know, what's the  
6 appropriate procedure for conducting a case like this. In  
7 similar types of circumstances, we've had memos on  
8 questions of law to determine what the standard is or what  
9 the duty is, and then -- and so it proceeded in phases.  
10 And, then, depending on what the duty is, if there is a  
11 duty, then dealing with the facts, particular facts of the  
12 case. And, in most circumstances, after a prehearing  
13 conference, there would be a technical session at which we  
14 would provide the parties the opportunity to consider  
15 procedural options and make a recommendation to us.

16 I see that we essentially have three  
17 options here. We could close the hearing -- the  
18 prehearing conference, take the matter under advisement,  
19 and issue a document that's outlining the procedures and  
20 the scope. We could go to the technical session and give  
21 the parties an opportunity to discuss these issues, and  
22 then make a recommendation, and that we would take under  
23 consideration. And, I guess that really has two parts:  
24 How much deference to go the give the proposal or whether

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1 we would make some distinctions on our own.

2 But, having laid out I think what is  
3 kind of the range of procedural options, I'm going to give  
4 the parties opportunities to provide us with some of their  
5 thinking on what's the appropriate procedures. And, we'll  
6 start with Mr. Rodier.

7 MR. RODIER: Mr. Chairman, I think that  
8 the Staff has said they would make themselves available to  
9 try to manage, organize, and help focus the process. And,  
10 so, I think our feeling would be that it might be  
11 appropriate to go into a technical conference and see what  
12 we can accomplish there.

13 CHAIRMAN GETZ: Okay. Mr. Bersak?

14 MR. BERSAK: Mr. Chairman, I still think  
15 that there may be some more procedural prerequisites  
16 required before we move to an adjudicative process. And,  
17 until I know and have had a chance to look at the laws and  
18 the regulations to determine what needs to be done, I'm  
19 not sure that it would be of value to have all the parties  
20 sit around a table and discuss what might have to go, you  
21 know, a way that we may go forward, when we don't know  
22 what the law and the regulations require. I truly -- So,  
23 I guess I'm doing this from the seat of my pants, I  
24 believe that there has to be a new order of notice setting

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1       forth an adjudicative proceeding. That would greatly  
2       change, you know, what we suggest going forward. And, in  
3       that order of notice, I believe would have to set forth  
4       the issues that are part of that proceeding, to allow  
5       others, who may want to intervene, have the opportunity to  
6       come and intervene.

7                       What I suggest is that the parties be  
8       given a chance to go back and look at this. We will  
9       submit whatever research we find as to whether that's  
10      necessary or not. And, if it's not necessary, we can put  
11      in writing what we propose as a way of moving forward.

12                      CHAIRMAN GETZ: Ms. Hatfield.

13                      MS. HATFIELD: Thank you, Mr. Chairman.  
14      I think I agree with Mr. Bersak that it maybe not that an  
15      order of notice is required, but I think what might be  
16      helpful is a prehearing conference order from the  
17      Commission setting forth your decision, so that PSNH could  
18      decide if they need to respond to that. It seems like  
19      having that decision from the Commission in writing, and  
20      then setting forth, you know, how you see, and even if it  
21      is up to the parties, which I think it would be good for  
22      the parties to sit down and talk about a schedule and  
23      briefing and that sort of thing, I do think it would be  
24      helpful to have some kind of action from the Commission

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1 before we go into the next phase of the proceeding.

2 CHAIRMAN GETZ: When you say "it would  
3 be helpful to sit down", do you mean this afternoon or  
4 some other time?

5 MS. HATFIELD: Really, whatever works  
6 for the parties.

7 CHAIRMAN GETZ: Okay. Ms. Amidon, did  
8 you have some thoughts on procedures?

9 MS. AMIDON: Yes. I agree with the  
10 Office of Consumer Advocate. I think that we need more  
11 direction from the Commission as to what the scope of this  
12 proceeding is, before we can set a schedule and determine  
13 what legal issues need to be resolved. I would, you know,  
14 suggest at the outset that we proceed with legal briefs as  
15 to the issue in the order of notice. But, as Attorney  
16 Bersak pointed out, depending on what the Commission's  
17 ruling is on the scope of this docket, which is a  
18 complaint by a single entity against PSNH, we may have --  
19 we may have more issues to cover in a legal brief. For  
20 example, if you include Concord Steam's complaint,  
21 essentially, what they did is they filed a Motion to  
22 Intervene, which is another complaint against PSNH for a  
23 similar fact situation, but they have an additional  
24 complicating issue of the PURPA obligations, which would

1       only apply to Concord Steam. That would involve  
2       substantial research and briefing.

3                       So, I really think it would be helpful  
4       to get more direction in a prehearing order from the  
5       Commission, so that we can determine how to break this out  
6       and move forward.

7                       CHAIRMAN GETZ: Well, I guess I just  
8       would say this. You know, I'm not sure how much extra  
9       procedure is required. I don't want to add unnecessary  
10      procedures, but -- Mr. Patch.

11                      MR. PATCH: Mr. Chairman, it seems,  
12      though, the Commission has already made the determination,  
13      if I understood correctly, that you consider this to be  
14      worthy of being an adjudicative proceeding. And, it seems  
15      to me you've already issued an order of notice. So, it  
16      seems as though this would be sort of some undue delay.

17                      I guess the other thing I'd like to  
18      point out is that I think the PURPA issue is much more  
19      than a Concord Steam issue. I think it goes far beyond  
20      that. It certainly has ramifications for Clean Power  
21      Development. They may be different whether under 20 or  
22      over 20 megawatts. But that's an issue much larger than  
23      just Concord Steam.

24                      I don't know, it may be difficult, if we

1 have a technical session, to reach agreement on what the  
2 issues are. But I just -- I'm not convinced that having  
3 another whole order of notice is necessary. It seems to  
4 me the Commission has already made the decision about this  
5 being an adjudicated process.

6 CHAIRMAN GETZ: Mr. Hodge, do you have  
7 anything?

8 MR. HODGE: I think any -- any  
9 additional research, if you will, into it, is just a --  
10 it's a delay. I think you've made the decision, and we  
11 should move forward.

12 MR. RODIER: We're prepared to file  
13 testimony, Mr. Chairman.

14 CHAIRMAN GETZ: Well, Mr. MacQueen or  
15 Mr. Cunningham, --

16 MR. RODIER: Sorry.

17 CHAIRMAN GETZ: -- do you have anything?

18 MR. CUNNINGHAM: No, I absolutely agree  
19 with Mr. Hodge. Delay is unnecessary and would not be  
20 useful. This matter is open and should be carefully  
21 investigated.

22 CHAIRMAN GETZ: Mr. Rodier?

23 MR. RODIER: I'm sorry to interrupt  
24 again, Mr. Chairman. I was just going to say, we're ready

1 to file our testimony as the complainant. That would be  
2 the scope of the adjudicated proceeding, I believe.

3 CHAIRMAN GETZ: Well, I'm not sure what  
4 the -- how to take that. Because, I think, before we see  
5 the testimony, I think the testimony is most useful in the  
6 context of having determined what the legal duty is. So,  
7 when you say you're "ready to file your testimony", is it  
8 the testimony as to the facts that have occurred and how  
9 the duty, as you see it, has been violated?

10 MR. RODIER: Yes. And, to that extent,  
11 it's not unlike a number of other proceedings that come  
12 into the Commission. You take -- you make a record on the  
13 facts. And, then, when you come to your order part, it  
14 has to find facts, and then you have to instruct everybody  
15 as to what the applicable law is. There's been  
16 differences of opinion on it. And, then, you come up with  
17 your remedy. So, I think it's, you know, just a similar  
18 process.

19 CHAIRMAN GETZ: Okay. But, usually,  
20 those petitions that were accompanied by prefiled  
21 testimony are kind of within some traditional context,  
22 like a rate case or some other filing, where it's known  
23 that the standard is, what the tests are, and what the  
24 Commission is required to do. And, I guess I'm concerned

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1       that we won't --

2                       MR. RODIER: Well, I can agree with you  
3       on that.

4                       CHAIRMAN GETZ: Ms. Amidon.

5                       MS. AMIDON: Thank you, Mr. Chairman.  
6       We disagree that this docket should be used to the extent  
7       that Mr. Patch suggests as regarding PURPA. I mean, at  
8       the outset, the Commission has articulated in the order of  
9       notice that the question here is "whether and to the  
10      extent that PSNH has a legal duty to contract with Clean  
11      Power Development?"

12                      If the Commission is considering to  
13      entertain Mr. Patch's idea that we should be using this  
14      docket to set rates under PURPA, we strongly disagree that  
15      that is appropriate in this docket. That involves every  
16      other utility in this state. And, I'm not sure of the  
17      impact on competitive suppliers. But it certainly reaches  
18      far beyond the scope of issues that were articulated in  
19      the order notice in this docket. In fact, the order of  
20      notice in this docket doesn't even include Concord Steam,  
21      which, again, that Concord Steam's complaint would be  
22      included in this proceeding. And, so, again, I would  
23      request that the Commission issue a prehearing conference  
24      order that delineates the scope of the issues in this

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1 docket, so that we can have an orderly process and address  
2 at the outset what legal issues we need to determine to  
3 see whether there is a duty that PSNH has and to what  
4 extent there is a duty, and then whether there has been a  
5 failure of PSNH to meet that responsibility.

6 To put pricing issues under PURPA in  
7 this docket is totally out of line with the scope of the  
8 docket as articulated in the order of notice.

9 CHAIRMAN GETZ: Okay. Thank you. Any  
10 other comments with respect to how such a proceeding would  
11 be conducted? Mr. Patch.

12 MR. PATCH: Mr. Chairman, I guess I'd  
13 just like to say, I had even suggested to the Commission  
14 before that the Commission ought to consider, either in  
15 this docket or another docket, the PURPA obligation. So,  
16 I'm not necessarily pushing that it has to be here.

17 But, I think, if the question is "what  
18 are the obligations that PSNH has to purchase power?"  
19 Clearly, one of those obligations arises under PURPA. So,  
20 I don't know, that's what the order of notice said. And,  
21 so, I think to suggest that this docket isn't an  
22 appropriate place to at least consider that is incorrect.  
23 Although, I understand Staff's point with regard to the  
24 fact that -- that PURPA obligations would impact on other

1 utilities other than PSNH. I mean, I clearly understand  
2 that. But, if they have an obligation to purchase power,  
3 it may be under state law, it may be under federal law,  
4 and there may be some other obligation that arises under  
5 common law, I don't know. But I think it's broader than  
6 just state law.

7 CHAIRMAN GETZ: Mr. Rodier.

8 MR. RODIER: Well, I was just going to  
9 say, the Clerk's office here did send the order of notice  
10 to the other utilities and said "Hey, you might be  
11 interested in these issues here." So, they did get actual  
12 notice. And, I think they were saying "Wow. I don't  
13 think we want to get involved in that." But, then, you  
14 know, that's a decision that they made. But, certainly,  
15 if they want to late intervene, that's fine. It would be  
16 fine with us. That's another way of resolving this. Give  
17 them a second bite at the apple.

18 The order of notice -- the publishing of  
19 these things, as you know, Mr. Chairman, is like \$500.  
20 And, for that reason alone, without a long-term PPA, we  
21 could do without another order of notice, if you could  
22 just consider that. I think we do have an order of notice  
23 that's adequate.

24 (Chairman and Commissioners conferring.)

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1                   MR. BERSAK: Mr. Chairman, I really  
2 suggest that you let the parties figure out what the legal  
3 obligations are, if we're going to go into areas such as  
4 PURPA, which are extremely outside of the purview of this  
5 investigation. If I were Unitil, I'd want to be here. If  
6 I was National Grid, I'd want to be here. If I was the  
7 Business & Industry Association, I'd want to be here. If  
8 I'm a PSNH customer, I would want to be here before we  
9 went back to the days of PURPA. That was not clearly  
10 noticed by any sense of the imagination in the order of  
11 notice that has been published in this proceeding. Let us  
12 figure out what's required as we turn from a investigative  
13 inquiry into an adjudicative proceeding with respect to  
14 notice requirements, that the Commission, as Attorney  
15 Amidon suggested, tell us what the issues are, so we can  
16 do this properly, if we're going to do it at all.

17                   CHAIRMAN GETZ: Well, actually, it seems  
18 to me that there's somewhat opposing points there. Let  
19 the parties speak together to determine what the issues  
20 are, but that we should be --

21                   MR. BERSAK: I'm sorry.

22                   CHAIRMAN GETZ: -- giving advice as to  
23 what the issues are.

24                   MR. BERSAK: No, I didn't expect the

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1 parties to consult. I expect the parties to go home, look  
2 at the law, write a letter or memo saying "This is what's  
3 required in this case." There's lots of people saying "I  
4 think", that "I think it should go this way", and they're  
5 probably right, maybe they should. But what should happen  
6 and what the law says are not necessarily the same. And,  
7 I would like to make sure that we follow the correct  
8 procedure.

9 CHAIRMAN GETZ: And, I think what --  
10 thank you, Mr. Bersak. What we intend to do is, after we  
11 close the prehearing conference, to the extent that the  
12 parties want to meet and come to some meeting of the minds  
13 about what the procedure should be and what types of  
14 issues should be briefed, then, obviously, the parties  
15 have the opportunity to do that. And, if they can file,  
16 you know, some consensus document or file something  
17 individually, then please do that. If there are issues  
18 that can't be considered this afternoon, then I guess the  
19 issues that Mr. Bersak states require further research, I  
20 guess I would say that any party can file those documents,  
21 either what comes out of discussions today or what comes  
22 out of independent research, by the close of business  
23 Friday. And, then, we will proceed from there to issue a  
24 scheduling order that will look at whatever types of

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1 filings we get from the parties, in terms of what the next  
2 steps in the procedure are and what the legal issues are  
3 that we would like to see briefed or whatever other  
4 procedural mechanisms we need to address and issues  
5 regarding scope, which somewhat goes to the issues of the  
6 breadth of the legal duty. Ms. Amidon.

7 MS. AMIDON: Yes, I have a couple  
8 questions. First of all, has the Commission decided to  
9 include what essentially is Concord Steam's complaint in  
10 this docket or are you going to require them to file in a  
11 separate docket? That will affect the scoping issues,  
12 because PURPA really pertains to them only.

13 CHAIRMAN GETZ: Okay. Well, I think  
14 it's like a number of issues where there may be some  
15 debate. As I think I indicated earlier, Concord Steam  
16 filed a Petition to Intervene that could be construed to  
17 be a corresponding complaint, because there's shared  
18 questions of law. And, you know, I think Mr. Patch makes  
19 the argument, I know Mr. Bersak disputes it, but, you  
20 know, that one of the issues here today was to consider  
21 the nature and extent of PSNH's legal obligation, and the  
22 PURPA issue was raised in the Concord Steam petition some  
23 time ago.

24 So, I would say we haven't made the

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1 decision about what's going to -- whether we're going to  
2 treat the Concord Steam issue as part of this proceeding.  
3 But I think there's a reasonable argument that we should  
4 do so. And, also, I guess we'll deal with the issue of  
5 whether they are granted intervention or is this  
6 consolidated, but we haven't made that decision at this  
7 point.

8 MS. AMIDON: In addition, were you going  
9 to take inquiry from the Office of Consumer Advocate and  
10 myself as to positions regarding Motions to Intervene?

11 CHAIRMAN GETZ: Well, if you have a  
12 position on any of the Petitions to Intervene, please.

13 MS. AMIDON: Well, pursuant to the  
14 Chairman's discussion about intervention and putting  
15 conditions on intervention, I would just request that the  
16 Commission consider putting limits or conditions on  
17 interventions where parties have not expressly identified  
18 a right, duty, or interest, or to require them to  
19 intervene as a single entity, or where another party may  
20 have expressed similar interests, deny the intervention to  
21 ensure the orderly process of this proceeding.

22 CHAIRMAN GETZ: When you say  
23 "limitations", are you largely talking about having  
24 parties with similar interests, requiring them to

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1 consolidate their participation?

2 MS. AMIDON: Yes. Or to -- or where,  
3 for example, if you were going to allow the City of  
4 Berlin, since many of the State Representatives had the  
5 same -- expressed the same concerns, that would -- to deny  
6 certain Motions to Intervene if the same interests are  
7 expressed in another Motion to Intervene. Just so that we  
8 can be sure we have an orderly process here. For example,  
9 none of the State Reps are here. We don't have -- well, I  
10 guess we could find e-mail addresses. But there may be an  
11 assumption on their part that they were granted a motion  
12 to intervene simply because they filed it. We just want  
13 to be able to make sure that we have an appropriate  
14 service list, and that we don't have to seek concurrence,  
15 for example, of those people not present to whatever  
16 procedural schedule we may develop.

17 CHAIRMAN GETZ: And, just let me make  
18 clear as well, that we haven't made any decision on  
19 whether to grant or deny Petitions to Intervene, or, if  
20 they were granted, what types of limitation to impose.  
21 Ms. Hatfield.

22 MS. HATFIELD: Thank you, Mr. Chairman.  
23 We don't have a position. But I do think that Attorney  
24 Amidon raises some good points. And, we'd be happy to

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1 work with Staff to make sure that the intervenors who  
2 weren't present understand what types of issues might  
3 arise if they were to be full intervenors, such as  
4 discovery that could be propounded on them and that sort  
5 of thing. So, we'd be happy to work with Staff to  
6 communicate with the people who aren't present today.

7 CHAIRMAN GETZ: And, I would just say  
8 this, I don't know if this is part of what you were  
9 getting to, Ms. Amidon. To the extent that we take under  
10 advisement the arguments we've heard today and issue a --  
11 and give the parties who are here the opportunity to  
12 respond, certainly, other parties have that. And, we will  
13 issue a procedural order of some sort as quickly as we  
14 can. But I don't think that we're constrained in doing so  
15 because individuals who have petitioned to intervene have  
16 elected not to be present today. That we will go forward  
17 in the normal course.

18 MS. AMIDON: Okay.

19 CHAIRMAN GETZ: And, however that plays  
20 out, it plays out.

21 MS. AMIDON: Okay. Thank you.

22 CHAIRMAN GETZ: Is there anything else  
23 that the parties would like to raise this afternoon?

24 (No verbal response)

1                   CHAIRMAN GETZ: Okay. Hearing nothing,  
2 then we'll close the prehearing conference. We'll await  
3 for whatever filings may be submitted by the end of the  
4 week. And, we'll issue an appropriate scheduling order.  
5 Thank you, everyone.

6                   MR. RODIER: Thank you.  
7                   (Whereupon the prehearing conference  
8 ended at 1:12 p.m.)  
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