

1 Agreement. So, a decrease in REC value lowers
2 the revenue-sharing amounts.

3 Q. Okay. That's what I wanted to get to.

4 A. (White) Sorry.

5 Q. And I apologize if I misspoke. I don't know,
6 it's highly likely.

7 My next question is also for you,
8 Mr. White. If we would go to Exhibit 5,
9 Page 7, which has the estimate for the year-end
10 in that document. Are you there?

11 A. (White) Yes.

12 Q. Okay. So, Line 22 is "Burgess Biopower".

13 A. (White) Yes.

14 Q. And, if we go to the total estimated purchases,
15 and I understand this is for energy and
16 capacity, it's 36 million?

17 A. (White) Correct.

18 Q. Okay. And do you know roughly what portion of
19 that 36 million is over market?

20 A. (White) Yes. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Q. Okay.

4 A. (White) So, together, between [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

6 Q. Okay. Thank you. And do you have the response
7 to Data Request 4-8, which is a confidential
8 response?

9 A. (White) Yes.

10 MS. AMIDON: Okay. So, if we're
11 going to talk about this, I presume we have to
12 go on confidential record?

13 CHAIRMAN HONIGBERG: I think we
14 already had to because of the last answer
15 Mr. White gave.

16 MS. AMIDON: Yes.

17 CHAIRMAN HONIGBERG: But I do have a
18 question before you ask questions about
19 Exhibit 8 -- or, Exhibit 9 specifically.

20 Is a motion required by the Company
21 to get confidential treatment for this? I know
22 it was filed as a discovery response under the
23 rule that says that we can claim it there. But
24 then I think doesn't the rule also then say

1 that a motion has to be filed?

2 Mr. Fossum.

3 MR. FOSSUM: The particular citation
4 or the reference that we made is to the rule
5 that does not require a motion. Under that
6 rule, it's presumed to be confidential until
7 somebody seeks to make it nonconfidential. At
8 which time, we're given the opportunity then to
9 respond formally and make a formal request, if
10 one is necessary. But, basically, no filing is
11 triggered until somebody seeks to make it
12 nonconfidential.

13 CHAIRMAN HONIGBERG: Mr. Kreis, Ms.
14 Amidon, is that consistent with your
15 understanding?

16 MS. AMIDON: I'll let Mr. Kreis go
17 first.

18 MR. KREIS: It would help me if I
19 understood why this information is
20 confidential.

21 CHAIRMAN HONIGBERG: Well, let's --
22 we're not quite there yet.

23 Commissioner Bailey, you have a
24 question?

1 CMSR. BAILEY: Mr. Fossum, doesn't
2 that procedure apply to "routine" information
3 that's filed?

4 MR. FOSSUM: It does. And Energy
5 Service/Default Service proceedings are one of
6 the routine proceedings that are covered in
7 there. This has to go with -- this is a
8 discovery response relating to prices that are
9 paid under there. And we have actually --
10 we've answered similar questions previously and
11 treated them similarly. So, that's essentially
12 been how I think we have responded to this in
13 the past.

14 CMSR. BAILEY: I think that's true
15 for discovery, is that it gets held until
16 somebody asks to see it, and then we rule on
17 it. But, when it becomes part of the record,
18 is your argument that this is a "routine
19 filing"?

20 MR. FOSSUM: Well, I mean, this is a
21 piece of discovery, and, as far as I
22 understand, it's not part of the record yet.
23 But, as discovery, it was part of a routine
24 filing, yes.

1 CMSR. BAILEY: Okay.

2 CHAIRMAN HONIGBERG: Ms. Amidon.

3 MS. AMIDON: You know, and I would
4 argue that it's not a routine Energy Service
5 filing type of information, because that's
6 contemplated to protect wholesale prices, the
7 names of bidders who fail to win the bid, the
8 weighting of the results of those bids with
9 market prices selected by the Company.

10 And I reviewed the contract, the
11 underlying contract with -- between Laidlaw and
12 PSNH, and I don't -- I do believe I would need
13 to see an argument that it was confidential for
14 me to agree that it is confidential, because I
15 think it does relate to the work the Commission
16 is doing in connection with this contract.

17 CHAIRMAN HONIGBERG: Mr. Kreis, you
18 want to say something?

19 MR. KREIS: Yes. I would agree with
20 what I just heard Ms. Amidon say on behalf of
21 Staff. I do not have my copy of the rules in
22 front of me, but I guess I have a difficult
23 time believing that information that's
24 introduced into evidence in a formal hearing

1 like this one falls under the rule that governs
2 routine filings by utilities.

3 CHAIRMAN HONIGBERG: Well, there
4 certainly are things that come in, I think a
5 default service solicitation is one of those
6 things that does become an exhibit, it comes in
7 during the hearing on the merits, but is
8 covered by that rule. That's my understanding
9 of it anyway, and actually I also don't have
10 the rules in front of me. I mean, and,
11 actually, I don't think I've seen this -- an
12 analogous situation happen yet in front of me.
13 So, I'm not -- my instinct tells me that I'm
14 going to agree with Ms. Amidon, and I'm not
15 sure yet.

16 Ms. Amidon, do you --

17 MS. AMIDON: Yes. Mr. Frantz reminds
18 me that, you know, this is a case about setting
19 the Energy Service rate between, you know, from
20 July through December this year. And this, you
21 know, the over priced power purchase from
22 Burgess Biopower goes into the calculation of
23 rates, and the Cumulative Reduction Factor is a
24 companion piece to that. It may not go into

1 the calculation of rates, but it does impact
2 ratepayers. So, I have a -- I just disagree
3 that this is confidential.

4 CHAIRMAN HONIGBERG: That's a
5 substantive agreement about whether it is
6 confidential, right?

7 MS. AMIDON: Yes.

8 CHAIRMAN HONIGBERG: I am still hung
9 up on the process at this point. But there may
10 well be a -- there may well be a way out of
11 this.

12 Mr. Fossum, do you have any further
13 thoughts on this?

14 MR. FOSSUM: Well, I mean, I do have
15 the rule in front of me, 2 --

16 CHAIRMAN HONIGBERG: The internet is
17 a wonderful thing.

18 MR. FOSSUM: It is fantastic. You
19 know, 201.06(a)(15) provides that "In default
20 service proceedings", and then there's a series
21 of documents that are listed as being
22 confidential as part of one of those routine
23 filings. In that list it includes things like
24 "commodity and fuel pricing", which seems to be

1 exactly what this is. And that is under
2 Item h. Item p. there in that list
3 specifically calls out "Responses to data
4 requests related to Items a. through o. above."

5 So, we have treated this as
6 confidential. We have -- because we believe
7 that it is. I would also note that, as
8 Mr. White hinted at, that it is -- it's our
9 reading of the contract that requires us to
10 seek it to remain confidential. And, so,
11 that's what we have done.

12 CHAIRMAN HONIGBERG: Yes. I think
13 the way out of this for today is that -- is
14 that we're going to treat it as confidential
15 for now. I think we're going to ask the
16 Parties to confer following the hearing, and
17 they will either enter into a stipulation
18 regarding how it gets treated, or it may be
19 that you're going to need to file something to
20 keep it confidential going forward. But it
21 will be confidential until we resolve the
22 question, and we'll deal with it as
23 confidential for the remainder of this hearing,
24 and on the transcript, until the issue gets

1 resolved.

2 Does that work for everyone?

3 MS. AMIDON: Yes. But I'd like to
4 make one final note. Which is, the contract
5 between PSNH and Laidlaw, which was the
6 original purchase agreement, was made
7 completely redacted and a public document by
8 the Commission back at that time. And I
9 disagree with Mr. White that the over-market
10 costs are confidential, because the contract
11 specifies what the energy price is. That's
12 public. The energy price, at any point in
13 time, is public. Any person could make that
14 calculation. So, I don't believe that that
15 aspect of this is confidential. And I just
16 wanted to go on the record on that point.

17 CHAIRMAN HONIGBERG: Okay. Mr.
18 Kreis?

19 MR. KREIS: Mr. Chairman, I love what
20 you ruled before Ms. Amidon spoke, and I
21 understood that to be that it isn't necessary
22 to take a position at this time, because either
23 the Parties are going to resolve this issue by
24 stipulation, or we might need to make a filing,

1 at which point I am highly likely to agree with
2 what I just heard Ms. Amidon say.

3 CHAIRMAN HONIGBERG: Yes. But I
4 think we're lucky in that there's no members of
5 the public here. We're in a situation where we
6 don't have to resolve it. We can deal with it
7 after-the-fact, and without prejudicing
8 anybody's rights. And, Ms. Amidon, you'll be
9 able to make the arguments that you want to
10 make. And, Mr. Fossum, you'll be able to make
11 the arguments you want to make. And maybe
12 you'll convince each other and it will get
13 resolved that way. And, if not, we'll resolve
14 it.

15 MS. AMIDON: I may let Mr. Kreis make
16 the arguments, because he does a good job at
17 that.

18 CHAIRMAN HONIGBERG: Mr. Kreis is
19 here by himself today, and he pointed that out
20 to us in the earlier one. Yes, I feel your
21 pain, Mr. Kreis, because we're operating a man
22 down up here, too, so --

23 MR. KREIS: It is something to be
24 outnumbered 11 to 1 by a utility with business

1 at the Commission. But that notwithstanding, I
2 relish the opportunity, the former journalist
3 in me relishes the opportunity to make a robust
4 argument about confidentiality.

5 CHAIRMAN HONIGBERG: I'm optimistic
6 that, when you all sit down and talk with each
7 other calmly and coolly, we'll work our way
8 through this.

9 Ms. Amidon, you have questions about
10 this exhibit?

11 MS. AMIDON: Yes. Yes. Yes, I do.

12 BY MS. AMIDON:

13 Q. Mr. White, can you tell us what the "Cumulative
14 Reduction Fund" is and why it's part of this
15 contract?

16 A. (White) The "Cumulative Reduction Fund" is the
17 accumulation of the over and under energy
18 market purchases from the contract. So, it's a
19 plus and minus sum throughout the life of the
20 deal, of the contract price versus the
21 day-ahead LMPs at the Burgess node, where they
22 deliver power onto the ISO-New England system.

23 Q. What happens when the Cumulative Reduction Fund
24 reaches \$100 million?

1 A. (White) If at the end of a contract year there
2 is an amount over 100 million, the amount over
3 that figure is -- it's utilized as a discount
4 against energy payments in the following
5 contract year.

6 Q. And, if I look at your response here, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 Q. Okay.

2 CHAIRMAN HONIGBERG: I think we've
3 already established that all forecasts are
4 wrong. We just don't know in what direction or
5 by how much. I think we got that from
6 Mr. Kreis earlier.

7 MS. AMIDON: Thank you. I have no
8 further questions. Thank you.

9 CHAIRMAN HONIGBERG: Commissioner
10 Bailey.

11 BY CMSR. BAILEY:

12 Q. Mr. Goulding, you said that the primary driver
13 for the increase in this rate is due to the
14 increase in migration?

15 A. (Goulding) Yes.

16 Q. And, in your May filing, the Energy Service
17 rate was projected to be 11.6 cents, is that
18 right?

19 A. (Goulding) Yes, it was.

20 Q. And, in the new filing, it's 11.66 cents?

21 A. (Goulding) That's correct.

22 Q. But the migration forecast has gone down. So,
23 can you explain that?

24 A. (Goulding) Okay. So, there's a couple of