

In Re:
DE 10-195
PSNH/LAIDLAW BERLIN BIOPOWER

DAY 1 - AFTERNOON SESSION ONLY
January 24, 2011

SUSAN J. ROBIDAS, LCR

**DAY 1 - AFTERNOON SESSION ONLY - January 24, 2011
DE 10-195 PSNH/LAIDLAW BERLIN BIOPOWER**

1 STATE OF NEW HAMPSHIRE
2 PUBLIC UTILITIES COMMISSION
3
4 January 24, 2011 - 2:15 p.m. DAY 1
5 Concord, New Hampshire AFTERNOON SESSION ONLY
6 RE: DE 10-195
7 PUBLIC SERVICE CO. OF NEW HAMPSHIRE:
8 Petition for Approval of Power Purchase
9 Agreement between PSNH and Laidlaw Berlin
10 BioPower, LLC.
11
12 PRESENT: Chairman Thomas B. Getz, Presiding
13 Commissioner Clifton C. Below
14 Commissioner Amy L. Ignatius
15 Sandy Deno, Clerk
16 APPEARANCES: Reptg. Public Service Co. of N.H.:
17 Robert A. Bersak, Esq.
18 Reptg. City of Berlin:
19 Christopher Boldt, Esq. (Donahue, Tucker...)
20 Keriann Roman, Esq. (Donahue, Tucker...)
21 Reptg. Bridgewater Power, Pinetree Power,
22 Pinetree Power-Tamworth, DG Whitefield
23 Power, and Indeck Energy-Alexandria:
24 David J. Shulock, Esq. (Brown, Olson...)
25 David K. Wiesner, Esq. (Brown, Olson...)
26
27 Reptg. Clean Power Development:
28 James T. Rodier, Esq.
29
30 Reptg. Edrest Properties, LLC:
31 Jonathan Edwards
32
33 COURT REPORTER: Susan J. Robidas, LCR NO. 44
34

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1 APPEARANCES: (C O N T I N U E D)
2 Reptg. OCA:
3 Meredith A. Hatfield, Esq.
4 Kenneth E. Traum, Asst. Consumer Advocate
5 Office of Consumer Advocate
6
7 Reptg. Staff:
8 Suzanne G. Amidon, Esq.
9 Edward N. Damon, Esq.
10 Thomas C. Frantz, Director/Electric Div.
11 George R. McCluskey, Electric Division
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P R O C E E D I N G S
(WHEREUPON the hearing resumed at 2:15 p.m.)
CHAIRMAN GETZ: I apologize for the length of time it has taken to get back. But as you may be aware, these are some very complicated procedural issues that we have before this -- before us. So let me try and work through the procedural issues.
Okay. The first item is with respect to the Concord Steam withdrawal. We've determined to permit the withdrawal in the same manner and under the same conditions that we permitted the withdrawal of Laidlaw in this proceeding, noting that Concord Steam, in our view, is not a party necessary to the resolution of this docket, and that neither is the testimony or the discovery it may have -- and responses that it may have provided are similarly not necessary to the resolution of this proceeding.
And consistent as we did with Laidlaw, testimony and data responses will not become part of the evidence in this record. I think, as a result, the PSNH motions are moot.
And also, there was a Concord Steam motion for confidentiality, that they'll be permitted

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1 to take that information back; and/or to the extent
2 it's in the docket book and in possession of anyone
3 here at the Commission, it will be granted
4 confidential treatment.

5 More complicated issues with respect
6 to the Berlin -- City of Berlin motion for
7 confidentiality and the rebuttal testimony. There
8 are serious due process issues that are raised here.
9 And especially, we are concerned that, in light of
10 the efforts to undertake this proceeding with some
11 level of expedited treatment, that there's time
12 constraints that are created by trying to figure out
13 a way to deal with the testimony and the documents
14 for which confidential treatment has been sought.

15 So this is what we're going to do: We
16 haven't seen these documents, so we don't -- we
17 haven't been able to make a in camera review with
18 respect to the Ventyx or the Energy Solutions
19 materials. The description of those materials,
20 however, seems to be of the type that may be properly
21 accorded confidential treatment. So, I think,
22 consistent with our rules, in the interim these
23 documents will be accorded confidential treatment.
24 But that doesn't address the issue of what discovery

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1 could be taking place and how are parties going to
2 prepare cross-examination of the City's witness on
3 these documents.

4 And this is what we would propose:
5 Our goal today is to continue with the
6 cross-examination of the PSNH witnesses. I'm
7 presuming that won't be completed today, and we'll
8 take up with that testimony tomorrow and go as long
9 as we can and hopefully finish the cross-examination
10 of the PSNH witnesses.

11 We had noticed earlier that the City
12 of Berlin's witness would follow PSNH. We think
13 there has to be some opportunity for discovery about
14 these documents that are cited to by Mr. Sansoucy.
15 And I think there's going to basically have to be a
16 decision for the City of Berlin.

17 Before we go to hearing from
18 Mr. Sansoucy, I would suggest, either tomorrow or
19 Wednesday, but before we hear from him, a technical
20 session, opportunity for discovery, those documents
21 be provided to every party in this proceeding so that
22 they can prepare cross-examination.

23 The alternative to that is that those
24 dockets do not become -- or those documents do not

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1 become part of the record, and then Mr. Sansoucy's
2 testimony will be given the weight that it deserves
3 without those documents actually having become part
4 of the record in this proceeding.

5 So, Mr. Boldt.

6 MR. BOLDT: Question for
7 clarification, Mr. Chairman. Being provided to all
8 other parties in the docket requires them to be
9 subject to the confidentiality, I assume?

10 CHAIRMAN GETZ: Yes.

11 MR. BOLDT: So it's not --

12 CHAIRMAN GETZ: We're not going to
13 require a non -- written non-disclosure agreements.
14 But as part of confidentiality, all parties to this
15 proceeding should be aware that it's their obligation
16 to treat these documents in confidence and that
17 they're not to be copied, not to be discussed other
18 than in this proceeding. And if it gets to the point
19 where we have to do confidential cross-examination,
20 then we'll address that issue when it arises.

21 Now, however you need to comply with
22 the requirements under the agreement, in terms of
23 providing copies or sitting down and going over those
24 documents, then you'll have to figure out a way to do

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1 that. If you can't, then we're available to hear
2 that.

3 But the -- I think that's the only
4 fair way to have the parties have some opportunity to
5 prepare cross on that, unless, of course, you
6 determine that you don't want to make those documents
7 part of the record in this proceeding.

8 MR. BOLDT: If I may take it under
9 advisement and be able to discuss it at the break and
10 get back to you?

11 CHAIRMAN GETZ: Well, I think the
12 important part is we know by -- before we end with
13 the PSNH cross-examination --

14 MR. BOLDT: Sure.

15 CHAIRMAN GETZ: -- where that goes.
16 (Chairman and Commissioners conferring.)

17 CHAIRMAN GETZ: Okay. The next item,
18 then, is the motion to strike. And we agree with, in
19 large part, with the consumer advocate's motion, that
20 much of the testimony up to Page 36 of the rebuttal
21 is not properly within the scope of rebuttal
22 testimony. So we will grant the motion to strike,
23 except for what is described in the OCA motion on
24 Page 6 as Item 12E, which, really, in large part,

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1 goes to the Ventyx and Energy Solutions material.
2 And I take it that the argument there goes largely to
3 inability to have discovery at this point.
4 So what we will do is hold in abeyance
5 a decision on Page 27, Line 8 through Page 32,
6 Line 8, pending the resolution of the confidentiality
7 issues and what may happen in a tech session on those
8 issues; but otherwise, we would grant the motion to
9 strike.
10 And we also point out, because of the
11 position we've taken on the Concord Steam withdrawal,
12 that the references on Page 47 of 48 of
13 Mr. Sansoucy's rebuttal, basically Lines 11 -- well,
14 through the end of the testimony, Line 6 on Page 48,
15 that would be stricken as well.
16 MR. BERSAK: Mr. Chairman, the first
17 part that you were striking, can you just give me the
18 page ranges again, please?
19 CHAIRMAN GETZ: We are striking --
20 well, with respect to Concord Steam, that last part?
21 MR. BERSAK: No, no, the first part.
22 From page -- I know the Ventyx parts. But what was
23 the start and end of that one?
24 CHAIRMAN GETZ: I think you have to

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1 take reference to Ms. Hatfield's motion. So,
2 everything that Ms. Hatfield is asking to be stricken
3 will be stricken, except for -- so it might be easier
4 to follow if you look at Page 5 and 6 of the OCA
5 motion.
6 MR. BERSAK: Got it. Okay.
7 CHAIRMAN GETZ: So we're granting
8 Sections A, B, C and D. We're holding in abeyance
9 Section E. And we're granting F, G, H and I.
10 (Chairman and Commissioners conferring.)
11 CHAIRMAN GETZ: Any other -- well, and
12 one last procedural issue is with respect to PSNH
13 Exhibit 9. I think we'll permit Mr. Long to provide
14 a brief summary of that, if he chooses. And to the
15 extent that we have some opportunity for discovery or
16 some questions, or if there is a technical session,
17 then we'll permit the parties to inquire of PSNH
18 about those issues. But we're going to let Mr. Long
19 summarize those six points, and then -- but we're not
20 going to expect that folks will be prepared to
21 cross-examine on them today. If more time is
22 necessary, then you can ask for more time.
23 But if there is a technical session
24 tomorrow on the City of Berlin information, then the

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1 parties can try and discuss that at -- those six
2 items as well.
3 (Chairman and Commissioners conferring.)
4 MS. AMIDON: Mr. Chairman, because the
5 Commission has accepted Concord Steam's notice of
6 withdrawal and you have made certain statements
7 regarding Mr. Sansoucy's rebuttal testimony, insofar
8 as it referenced Concord Steam, would the same be
9 applicable to the PSNH rebuttal testimony? In other
10 words, any rebuttal of Mr. Dalton or other Concord
11 Steam witnesses and PSNH's rebuttal testimony should
12 also be stricken from the record? Am I -- is that
13 consistent with the Commission's ruling?
14 CHAIRMAN GETZ: That would be
15 consistent, unless there's some good reason not to do
16 that. And I think our position would be that any of
17 the direct information provided by Concord Steam is
18 out of the record, would not become part of the
19 record. I mean, effectively, I'm not sure what would
20 be gained by including argument against something
21 that's not in the record. But I think as a matter of
22 housekeeping, we would exclude any reference to that
23 material, unless it was of a general nature that
24 somehow also covered areas raised by other witnesses.

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1 MS. AMIDON: But where Mr. Dalton, for
2 example, is mentioned in particular, then that would
3 be struck?
4 CHAIRMAN GETZ: Yes.
5 MS. AMIDON: Or any other Concord
6 Steam...
7 I have another question, too. And I
8 know there may be some other questions, so I'll just
9 have this one more.
10 You referred a couple times to a
11 technical session. Could you please explain what the
12 Commission envisions?
13 CHAIRMAN GETZ: What I expect is that
14 tomorrow -- I'm expecting that tomorrow we'll be
15 completing the cross-examination of PSNH. I don't
16 expect that that's going to happen today. I think it
17 would be -- we would not be fairly in a position to
18 turn to the testimony or cross-examination of
19 Mr. Sansoucy unless parties had an opportunity to do
20 some discovery on these documents that nobody's seen.
21 So I would expect that, whenever we get done with the
22 cross-examination of PSNH, that the parties will be
23 here in this room in a technical session, given some
24 opportunity to see these materials and to get some

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1 understanding to prepare for cross-examination of
2 Mr. Sansoucy, unless the -- the other alternative is
3 that the City concludes that it doesn't want to
4 submit those materials.
5 MS. AMIDON: Mr. McCluskey has made me
6 broken my word. I have one more question.
7 There was a technical session
8 reference also with respect to Exhibit 9. How can we
9 conclude cross-examination of PSNH's witnesses prior
10 to having a technical session, if you will, on
11 Exhibit 9?
12 CHAIRMAN GETZ: Well, effectively,
13 that will be happening at the same time as this. We
14 won't --
15 MS. AMIDON: So we won't --
16 CHAIRMAN GETZ: Wait, wait a second.
17 Can I -- you'll have an opportunity. When we finish
18 with what we've got, then we can -- you can turn to
19 that Exhibit 9 and ask questions about it. I did not
20 mean to say that we'll end the cross-examination, you
21 get to do discovery on Exhibit 9, but you don't ever
22 get to ask any questions about it. That was not my
23 intent.
24 MR. BERSAK: May I suggest maybe two

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1 things that could be helpful? At least I'm trying to
2 be helpful. Perhaps we can get together or just set
3 a time right now at 8:30 tomorrow for the parties to
4 be here and start this technical session so we can
5 get through and make sure we get done with that. And
6 then we can allow --
7 CHAIRMAN GETZ: Wait, wait. You're
8 speaking specifically to Exhibit 9?
9 MR. BERSAK: I think both. I think we
10 can go through both. And I'm hopeful that it's not
11 going to take an unduly long period of time to go
12 through either of those matters, and then we can
13 start with the -- or continue with the proceeding as
14 quickly as we can get finished with the tech session.
15 That was Suggestion No. 1.
16 Suggestion No. 2 is I would be willing
17 to go through our rebuttal testimony to see which
18 portions need to be stricken as a result of the
19 withdrawal of Concord Steam. Some things may refer
20 to Concord Steam in particular, but may also rebut
21 positions taken by other testimony that's in the
22 docket. I will try to go through and do my best to
23 have a listing and an errata of what needs to be out
24 as a result of that motion to make it easier for the

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1 parties.
2 CHAIRMAN GETZ: That would be helpful,
3 because that was my concern in responding to
4 Ms. Amidon, that there might be sections that were
5 talking about --
6 MR. BERSAK: I'll do my best.
7 CHAIRMAN GETZ: -- multiple issues.
8 Mr. Boldt.
9 MR. BOLDT: Mr. Chairman,
10 clarification on your ruling on the motion to strike,
11 if I may.
12 Because Item A of Ms. Hatfield's
13 motion addresses, in essence, the data responses, and
14 both Ms. Hatfield and Attorney Amidon had said that
15 there are -- the data responses themselves can be
16 brought into the record --
17 CHAIRMAN GETZ: Well, actually, I
18 think that Item B would be the data responses;
19 correct? You're talking about the --
20 MR. BOLDT: No. I think the motion
21 is A. B is the testimony concerning capacity, if I'm
22 looking at the right... okay. You are -- I think
23 we're both right. You're looking at the list on 12.
24 I was looking at Paragraph 7. But Item B is the text

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1 from -- well, it actually doesn't quite follow. The
2 text of the data responses begins on Page 4 and runs
3 through to Page 12, I believe.
4 But if the data responses can come in
5 as an exhibit, I don't need to make an offer of
6 proof, I would assume, on those pages; correct? An
7 offer of proof for the record going up?
8 (Chairman and Commissioners conferring.)
9 CHAIRMAN GETZ: I want to make sure we
10 understand the issue. This is what I think you're
11 saying: In the rebuttal testimony beginning on
12 Page 3, Line 18, it starts talking about siting, and
13 there's a question: "Have you provided information
14 regarding siting already in this case?"
15 "Yes, as a data response."
16 "Could you please provide the same
17 testimony herein in order to bind the information
18 into the record?"
19 And then there's that -- then there's
20 a recounting of what was the data response to the
21 wood IPPs.
22 MR. BOLDT: Correct.
23 CHAIRMAN GETZ: Now, we've granted the
24 motion to strike, as that is not proper rebuttal.

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1 You're asking: Can I get it in anyways through
2 direct of my witness?
3 MR. BOLDT: The comments in this
4 morning's argument concerning this motion by both
5 Staff attorney and OCA attorney were, in essence,
6 that the data responses can come in; it just is not
7 proper for them to be included in the rebuttal.
8 My concern is, I don't want to make
9 things any longer than necessary.
10 CHAIRMAN GETZ: Well, we're way past
11 that. Let me address that issue, because I'm not
12 sure there's a meeting of the minds here on this
13 issue.
14 Discovery can be brought in in a
15 number of legitimate ways. It is not our typical
16 practice that a party who has been asked a data
17 response and has -- or has been asked a data request
18 and made a data response can then take that
19 information and make it part of their testimony
20 through direct.
21 What is the typical practice is the
22 party asking discovery now has that data response,
23 and they can introduce that data response through
24 their cross-examination. That's the typical

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1 practice.
2 MR. BOLDT: And other parties can
3 also use that information in their cross-examination;
4 correct? It's not limited to IPP. Somebody else --
5 OCA could cross-examine.
6 CHAIRMAN GETZ: Right. But I just
7 want to get to I think what the basic point is. If
8 you want to try and introduce that -- the data
9 response to your own witness as part of your direct
10 examination of your witness, then that probably won't
11 be permitted.
12 MR. BOLDT: Okay. And then my second
13 question was, this material that is being stricken is
14 part of the record going up for -- to be considered
15 as an offer of proof, in case the Supreme Court were
16 to overturn this body on that issue. It should have
17 been considered. It's something of that -- or do I
18 need to submit it in yet another form? And my hope
19 is the answer is no.
20 CHAIRMAN GETZ: I think I understand
21 your point there. It would not be part -- the
22 potential is it won't be part of the evidence on
23 which we base our decision, but it would be part of
24 the record that would be available on appeal to the

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1 Supreme Court.
2 MR. BOLDT: That's the clarification
3 I needed. Thank you.
4 CHAIRMAN GETZ: Okay. Ms. Hatfield.
5 MS. HATFIELD: Thank you,
6 Mr. Chairman. I did want to reserve my ability to
7 object to -- I know that you held in abeyance the
8 issue related to the Ventyx and the Energy Solutions
9 materials. I don't believe that it is sufficient to
10 let the parties have a technical session tomorrow and
11 be prepared to cross Mr. Sansoucy. So I just wanted
12 to say that for the record.
13 And similarly, PSNH, in their
14 Exhibit 9, have basically amended their original
15 filing that was made last July, and I also do not
16 think that a technical session tomorrow cures the
17 serious process issues that that raises. You know,
18 we understand the time frames that we're under. We
19 agree with PSNH that, if the PPA can be improved, we
20 want to improve it. But I also just want to say for
21 the record that it is just not fair for the company
22 to bring in a new PPA on the day of the hearing.
23 Thank you.
24 CHAIRMAN GETZ: Well, let me ask this

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1 question along those lines: So, would it be fair for
2 them to propose these as conditions in their closing
3 or as part of their position in this case, but then
4 wouldn't be subject to cross-examination? Or is
5 this -- I want to get a feel for where we are in
6 terms of fairness and due process, whether this is
7 providing more than is due or less than is due, or
8 are there other ways of addressing this issue.
9 MS. HATFIELD: I personally feel that
10 it is much more fair that they provided it now than
11 at the end of the hearing. But I guess what I'm
12 afraid of is that my witness, you know, just -- he
13 may not be able to thoroughly review this in the way
14 that he did with their original proposal. You know,
15 he can ask them questions at the tech session. I can
16 ask them questions on cross. But if this is going to
17 be the basis for the Commission's decision, it's just
18 a real cause for concern. I hope that we can
19 overcome that, and we will fully cooperate. But I
20 did just want to note that now, in case I raise it
21 later. I just wanted to note it now.
22 CHAIRMAN GETZ: Okay. Thank you.
23 And then let me just ask about
24 reactions to Mr. Bersak's proposal that the parties

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1 meet at 8:30 tomorrow morning and do, I guess,
2 whatever you think might be appropriate in terms of
3 trying to address some of these procedural issues,
4 trying to address some of the discovery issues. I
5 think it's fine with us if you want to do that. And
6 we will wait the call of the parties before we start
7 tomorrow.

8 But I wanted to throw in one other
9 thing. I had already pointed out that we've now set
10 aside Wednesday. We've also saved next Tuesday,
11 February 1st, as well, if it's necessary. So let me
12 get a reaction to that proposal from Mr. Bersak.

13 Mr. Boldt.

14 MR. BOLDT: First and foremost, we'd
15 be amenable to 8:30. To make things more hopefully
16 simple, I may be able to clarify, based on what you
17 had stricken, whether there is any need for the
18 Ventyx material. You may have stricken out
19 everything that it referred -- was used in reference;
20 and thereby, we may save a lot by us making that
21 choice, do we agree or not, at this stage of the
22 game. I can't say that right now because I need to
23 evaluate.

24 CHAIRMAN GETZ: That's fine. If you

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1 have some chance to look at it overnight and discuss
2 it among yourselves tomorrow, then we'll wait a call
3 of the parties tomorrow.

4 Anything else on these procedural
5 issues? Ms. Amidon.

6 MS. AMIDON: Just for Staff, I think
7 we'd prefer the Chairman's original proposal, which
8 was to conclude cross with PSNH and then have a
9 technical session regarding both issues.

10 CHAIRMAN GETZ: Does anybody else have
11 a preference? I mean, though, we still have the
12 issue of what to do with Exhibit 9.

13 Mr. Shulock.

14 MR. SHULOCK: I'd just like to make
15 clear. We originally objected to Exhibit 9 because
16 it introduces into the proceeding basically an
17 entirely new contract upon which we're not really
18 going to have the opportunity to conduct a full
19 discovery. There is no testimony -- and that
20 objection holds with regard to a technical session.
21 We don't think that that's adequate.

22 There is no testimony that has been
23 distributed in advance of this hearing describing
24 what this provision does or how it changes the

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1 economics of the contract. And so there is no
2 testimony upon which the Commission could base the
3 condition. There's nothing that's been prefiled,
4 vetted through discovery, re-supported by rebuttal,
5 et cetera.

6 So we would continue to object, even
7 if there's a technical session. We'd participate in
8 it, but we object to that process.

9 CHAIRMAN GETZ: So if I look at
10 362-F:9, it speaks about, upon request of one or more
11 companies, having notice of hearing, the Commission
12 may authorize multi-year purchase agreements with
13 renewable energy sources if it finds such agreements
14 or such an approach, as may be conditioned by the
15 Commission, to be in the public interest. And I
16 guess this may come down to how you characterize
17 these.

18 If we came to these conclusions on our
19 own, that would be permissible. But if the
20 parties -- if the petitioner puts them out there in
21 advance, that's -- it raises other issues of due
22 process?

23 MR. SHULOCK: I think the difference
24 is, if you came to those conclusions on your own

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1 after testimony had been filed in advance describing
2 them, and the parties had had the opportunity to vet
3 that evidence, then you'd probably be on solid
4 ground. But to introduce them at the end, with no
5 supporting testimony, no supporting discovery, et
6 cetera, we object to it.

7 (Chairman and Commissioners conferring.)

8 CHAIRMAN GETZ: Okay. So I think
9 we'll approve the proposal made by Mr. Bersak, that
10 the parties convene at 8:30 tomorrow and just try to
11 resolve some of these outstanding issues. I
12 understand the arguments, especially made by
13 Mr. Shulock and Ms. Hatfield. But I'd like to have
14 the parties see if there can be some resolution to
15 these procedural issues. And then when we begin the
16 hearings tomorrow, we'll hear a report on the status
17 of where we are and what continuing arguments there
18 are. And if there are things that we need to
19 address, we'll address them then.

20 Okay. Is there anything else before
21 we turn back to the panel?

22 (No verbal response)

23 CHAIRMAN GETZ: Okay. Hearing
24 nothing, then Mr. Shulock.

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1 CROSS-EXAMINATION (cont'd)
2 BY MR. SHULOCK:
3 Q. I'd like to step back a second to Exhibit IPP 7.
4 This was a question again regarding Mr. Large's
5 projection of the capacity gap in the energy -- the
6 gap between resources and supply in the year 2014.
7 And we asked PSNH: Did PSNH study, analyze, or
8 otherwise forecast the resource/supply and capacity
9 gap for the 20-year term of the PPA; and if so,
10 please state all assumptions made and provide all
11 related work papers, projections, studies, analyses
12 and documents.
13 Mr. Large, what was your answer to that
14 question? And that would be B.
15 A. (Mr. Large) The response to Question B is "No."
16 Q. So PSNH did not study, analyze or otherwise forecast
17 a resource supply and capacity gap for the 20-year
18 term of the PPA?
19 A. (Mr. Large) That's what's stated there.
20 Q. And before we left for break, I had asked a question
21 regarding the cumulative reduction account and
22 whether that account reflected the ratepayers' time
23 value of money, and I'd like to reask that question.
24 A. (Mr. Long) The question, you know, that doesn't

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1 include an interest on any amount above or below
2 market. And the answer is "No." We responded to
3 that in a data response, that that's a secondary
4 effect. It was not one of the items that was
5 negotiated. And we're prepared for the contract to
6 go forward as is. But I also said that we'd be
7 willing to consider applying interest to the over and
8 above amounts.
9 Q. But again, that interest would only be backed up by
10 the fair market value of the facility at some time in
11 the future; correct?
12 A. (Mr. Long) I think you're getting into the Exhibit 9,
13 where that was the change that we would be willing to
14 accept, or a condition that we'd be willing to
15 accept, that over- or under-recoveries, we'd apply
16 interest to those, and that would affect the
17 cumulative reduction factor. It would be either more
18 or less, and then it would be without the interest
19 application.
20 Q. But still backed up. The only opportunity for the
21 ratepayers to realize the value of that cumulative
22 reduction is through the purchase option or sale of
23 that option; correct?
24 A. (Mr. Long) Those are two of the options, yes.

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1 Q. Okay. And those options all depend upon what the
2 fair market value of the facility is going to be;
3 correct?
4 A. (Mr. Long) The options themselves don't depend on the
5 fair market value. You can exercise those options
6 regardless of the fair market value.
7 Q. If the fair market value of the facility is zero,
8 which is something that you conceded it might be, how
9 do the ratepayers recapture the over-market energy
10 payments that might be made?
11 A. (Mr. Long) Yeah, that wasn't my answer, though. My
12 answer was, for instance, if the law allowed PSNH to
13 own the plant, that would be exercising one option.
14 And that's not dependent on the market value.
15 Another option would be to sell the rights, and that
16 wouldn't depend on market value.
17 Now you're asking me a different question: What
18 if the market value was zero? Would there be any
19 value to utilize? And the answer is, most likely no.
20 But I disagree that it's likely -- it's highly
21 unlikely that the value would be zero after 20 years.
22 Q. So your position is that someone would purchase and
23 give value for your purchase option without trying to
24 determine what the fair market value of the facility

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1 would be when that option were eventually exercised.
2 A. (Mr. Long) Yes, I would say that's correct.
3 Q. Now, as currently written, the PPA doesn't protect
4 ratepayers from over-market -- I'm sorry -- the
5 cumulative reduction account. It does not protect
6 ratepayers from over-market REC payments; is that
7 correct?
8 A. (Mr. Long) Yes, because it's a discounted price to
9 begin with.
10 Q. What is the market value of the New Hampshire Class I
11 REC today?
12 A. (Mr. Long) I don't know, offhand.
13 Q. What was the last quote that you heard of for a New
14 Hampshire Class I REC?
15 A. (Mr. Long) In which market?
16 Q. New Hampshire.
17 A. (Mr. Labrecque) I believe it's \$20.
18 Q. And the price -- or the amount that PSNH would pay in
19 the first year of that contract is how much for a New
20 Hampshire Class I REC?
21 A. (Mr. Labrecque) In what year --
22 A. (Mr. Long) What year are we referring to?
23 Q. I believe you testified --
24 A. (Mr. Labrecque) The first question you asked related

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1 to current, 2010, or 2011 price for RECs?
2 Q. That's correct.
3 A. (Mr. Labrecque) That doesn't translate to what the
4 price would be for the first year of the PPA.
5 Q. And why is that?
6 A. (Mr. Labrecque) Because it's a different vintage of
7 FREC. It's like asking me what's the price of a
8 gallon of gas is going to be in 2013.
9 Q. What do you project the value of a New Hampshire
10 Class I REC to be in 2013?
11 A. (Mr. Labrecque) We don't have a projection of that.
12 Q. So you don't actually know that it's going to be
13 below market -- the amount that you pay in 2013 will
14 be below market?
15 A. (Mr. Labrecque) No. The only thing we have any
16 relative ability to project is the ACP, and that will
17 be somewhere north of \$60.
18 Q. Would you agree that there are regulatory risks
19 associated with REC purchases?
20 A. (Mr. Long) I guess you'd have to be more specific
21 about what you mean by "regulatory risk."
22 Q. Well, you operate Schiller Station; correct?
23 A. (Mr. Long) What was that question again?
24 Q. You own and operate Schiller Station, Unit 5 --

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1 A. (Mr. Long) Yes.
2 Q. -- which now produces New Hampshire Class I RECs?
3 A. (Mr. Long) And also Massachusetts Class I RECs, and
4 other states as well.
5 Q. And if the New Hampshire Legislature were to decide
6 that New Hampshire Class I RECs would only include
7 RECs from facilities that were constructed after
8 2016, would -- and there were no grandfathering
9 clause, would New Hampshire -- would the Schiller
10 Station still qualify for New Hampshire Class I RECs?
11 A. (Mr. Long) You're asking me a hypothetical.
12 Q. I am.
13 A. (Mr. Long) You're saying if the law was changed, such
14 that it's adverse, then it would be adverse. If the
15 law was changed to be advantageous, then it's going
16 to be advantageous. But, yeah, the law can be
17 changed either way. But I think the legislature
18 would only consider such changes knowing what the
19 facts are and how it impacts New Hampshire.
20 Q. Now, the PPA allocates those regulatory risks between
21 Laidlaw and PSNH; isn't that correct?
22 A. (Mr. Long) You're talking about regulatory risk. You
23 mean legislative risk?
24 Q. There are regulations -- there are statutes, rules,

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1 policies regarding RECs. Any of those could change,
2 can't they?
3 A. (Mr. Long) I think the Commission simply administers
4 the law. So I think if you're talking about changes
5 in law, that might be. I don't -- I can't imagine --
6 I don't know of any changes that a regulator would
7 make. I think they implement the law.
8 Q. I am exactly discussing changes in law. Is there not
9 a risk that the law would change --
10 A. (Mr. Long) Yes.
11 Q. -- with regard to RECs in New Hampshire?
12 A. (Mr. Long) Yes. The law could be changed favorably,
13 or the law could be changed unfavorably.
14 Q. And the PPA that you entered into with Laidlaw
15 allocates those risks; correct?
16 A. (Mr. Long) There's no allocation. It's simply a
17 specification of price.
18 Q. I'd like to ask you some questions about Section 8.1
19 of the PPA.
20 A. (Mr. Long) I have it in front of me.
21 Q. This section allocates risk, doesn't it?
22 A. (Mr. Long) It specifies who's responsible for what
23 cost, if that's what you're referring to.
24 Q. If there's a change in law?

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1 (Witness reviews document.)
2 A. (Mr. Long) It's a rather lengthy section. I don't
3 know if I want to read it all. But it just makes
4 provisions, as it's titled, regarding administrative
5 costs. That's the title of Article 1 point -- 8.1 is
6 Administrative Costs.
7 Q. Why don't we start on Page 13. You see a section
8 that's highlighted, one, two, three, four, five, six
9 lines down that says "Provided further"?
10 A. (Mr. Long) I see it.
11 Q. Can you read that clause through to the end of the
12 sentence?
13 A. (Mr. Long) Yes. "Provided further, that if a capital
14 change in law, in parens, as hereinunder defined, end
15 of parens, occurs that would require seller to make a
16 capital expenditure to incur any expense, to incur
17 any liability, or to increase operating cost for the
18 facility in order to continue to produce renewable
19 products or for seller to transfer the renewable
20 products to PSNH, that PSNH's sole option, so long as
21 PSNH, in a manner reasonably acceptable to the
22 seller, agrees to compensate seller for all such
23 capital expenditures, costs, losses and expenses and
24 agrees to bear such liabilities, seller shall, (A),

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1 take such actions as reasonably requested by PSNH;
2 and (B), execute such documents as necessary to
3 convey to PSNH renewable products in a form
4 reasonably acceptable to seller. If a change in law
5 occurs where seller realizes the monetary value of
6 any renewable products and seller is unable to
7 transfer such renewable products to PSNH,
8 notwithstanding PSNH's request to transfer such
9 renewable products to PSNH, and PSNH's willingness to
10 bare any liabilities incurred by seller or compensate
11 seller for any expenses, losses or costs as provided
12 above, seller shall, within 30 days of actual
13 receipt, pay to PSNH the amount that seller actually
14 receives, in parens, net of any costs, taxes, or
15 expenses seller incurs to receive such amounts, end
16 of parens, as a result of its ownership of the
17 renewable products within a reasonable time after
18 such amounts are paid to seller, subject to the
19 reimbursement obligations of PSNH" --
20 Q. Actually, can I stop you there for a second, because
21 you're going beyond what I asked you to read --
22 A. (Mr. Long) okay.
23 Q. -- into the second sentence beyond.
24 That first clause, to the end of the sentence,

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1 refers to having -- seller having to make capital
2 expenditures or increase operating expenses in order
3 to continue to produce renewable products.
4 Now, renewable products include New Hampshire
5 Class I RECs, don't they?
6 A. (Mr. Long) Yes.
7 Q. So, isn't it true that, under this provision, if the
8 law were to change in such a manner to make the
9 Laidlaw facility ineligible as a Class I facility --
10 say, for instance, a change in the emissions
11 requirements, and it required the installation of
12 some additional emissions equipment -- that would be
13 a capital cost; right?
14 A. (Mr. Long) Yes. I presume it would be so.
15 Q. And if that --
16 A. (Mr. Long) It could be operational. Could be an
17 operational expense. But most likely it'd be
18 capital.
19 Q. And if that emissions equipment required the use of,
20 say something like ammonia, that ammonia would be an
21 increase in operating expenses, wouldn't it?
22 A. (Mr. Long) Yes.
23 Q. And if the facility is unable to produce New
24 Hampshire Class I RECs as a result of that, PSNH gets

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1 to decide for its ratepayers whether to pay for that
2 capital upgrade and those additional costs in order
3 to receive New Hampshire Class I RECs; is that right?
4 A. (Mr. Long) Yes, you know, again, in accordance with
5 the terms we just read. But if there's a change in
6 law, and the Laidlaw project had previously qualified
7 and built to meet the current law -- but if there's a
8 change in law and then they had to make a capital
9 investment, they're not obligated to make that
10 capital investment. But if they do, and if we
11 concur, then we can make arrangements -- if we
12 thought it was -- you know, it would create more
13 value than not having it, then, yes, they could make
14 that capital investment and renegotiate some terms.
15 Q. Well, aren't we talking about sort of two different
16 things here?
17 A. (Mr. Long) I don't know.
18 Q. They're not required to make the -- they're not --
19 the fact that they're no longer eligible to produce
20 New Hampshire Class I RECs, and the fact that the
21 Commission would have to decertify them as a New
22 Hampshire Class I REC seller --
23 A. (Mr. Long) Due to a change in law.
24 Q. -- due to a change in law, under that provision,

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1 under your contract, they would still be selling you
2 New Hampshire Class I RECs; right?
3 A. (Mr. Long) Well, the payments would still be made.
4 It's Article 23 on Page 26 really gets to the intent,
5 which is reflected in the area that we're reading
6 right here.
7 Q. Well, let's go to Article 23 for a second.
8 A. (Mr. Long) It's on Page 26.
9 Q. And just for expediency's sake, I'll read the
10 beginning of it. So this is Change in Law. "If,
11 during the term, a change in law occurs or any of the
12 ISO New England documents are changed, resulting in
13 elimination of or a material adverse effect upon a
14 material right or obligation of a party, then, unless
15 such change in law is otherwise specifically
16 addressed herein, the parties will negotiate in good
17 faith in an attempt to amend this agreement to
18 incorporate such changes as they mutually deem
19 necessary to reflect the change in law or the change
20 in any ISO New England documents."
21 Isn't the facility's continued eligibility to
22 produce New Hampshire Class I RECs under the contract
23 otherwise specifically addressed in the contract?
24 A. (Mr. Long) Well, the payment of RECs is specifically

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1 addressed. But this section goes to the intent. And
2 you left out the next two lines that talk about what
3 the intent of the agreement is.
4 Q. I'd like you to look at Section 1.44 and please read
5 that into the record.
6 A. (Mr. Long) 1.44 is a definition of New Hampshire
7 Class I renewable energy credits, or New Hampshire
8 Class I RECs. And that shall mean REC produced or,
9 in the event of a change in law that would have been
10 produced by the facility pursuant to its
11 qualification as renewable energy source, as defined
12 in the New Hampshire Class I renewable statutes at NH
13 RSA 362-F, as in effect on the effective date, and
14 regardless of any subsequent change in law.
15 Q. So, under this provision and under this PPA, the
16 Laidlaw facility would remain eligible to produce New
17 Hampshire Class I RECs as defined in this agreement,
18 regardless of a subsequent change in the law.
19 A. (Mr. Long) That's not the way I would interpret it.
20 It's not -- the law will be what the law is. What
21 this says is that, basically, payments will be made
22 based on the law as it exists today.
23 Q. Doesn't this define New Hampshire Class I REC, not
24 payment?

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1 A. (Mr. Long) But this -- this definition is what's
2 applied to the payment schedule. This definition.
3 Q. The New Hampshire statutory definition of
4 "certificates" is not worded this way, is it?
5 A. (Mr. Long) It is today. But the question is: What
6 happens if the law is changed?
7 Q. But the New Hampshire RPS statute does not say that a
8 New Hampshire Class I REC, as it's defined today,
9 will continue despite changes that the legislature
10 makes later; right?
11 A. (Mr. Long) Well, no. The law says what it is today.
12 And it will continue to say that until -- unless the
13 law is changed. And this definition points to the
14 New Hampshire law today. So that law only has one
15 definition: As it is today.
16 Q. So, here's where I'm a little uncertain: If the New
17 Hampshire statute changes, and the facility is no
18 longer eligible to produce New Hampshire Class I
19 RECs, okay, and the PUC must decertify that facility
20 as a New Hampshire Class I REC generator, what are
21 you purchasing?
22 A. (Mr. Long) We will continue to purchase the renewable
23 attributes. And there could be a change in law in
24 New Hampshire, or anywhere else in the nation. And

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1 that's where I pointed to Section 23, which talks
2 about the intent to preserve the value for both
3 parties. And if we're not able to agree, then it
4 goes to the dispute resolution process.
5 But the purpose and reason for this provision is
6 that, obviously, they could not finance a facility
7 that says, we'll make these payments, unless we
8 don't. So this is just a way of ensuring that the
9 payment stream is there and that we can perhaps get
10 greater value in time, depending upon the laws. Or
11 if there is an adverse law change, we have other
12 opportunities to try to offset payment.
13 Q. But it could be --
14 A. (Mr. Long) It could be a national RPS law. It could
15 be changes in any state law. It could be marketable
16 who knows where over time.
17 Q. But PSNH would not be purchasing a certificate that
18 could be used to satisfy its compliance requirement
19 for the New Hampshire Class I RPS if that change in
20 law occurs; is that correct?
21 A. (Mr. Long) We're continuing to purchase the
22 environmental attributes. And if the New Hampshire
23 changes how it views those attributes, I mean, then
24 that's what these sections deal with.

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1 Q. So you're allocating regulatory risk?
2 A. (Mr. Long) Legislative risk. We're recognizing that
3 there's a potential for the law to change in the
4 future; so, what do you do in the event that the law
5 changes? And that's what these various sections
6 address.
7 Q. So, who is it under this contract that bears the risk
8 that the legislature will change the RPS
9 unfavorably?
10 A. (Mr. Long) Unfavorably or favorably, the prices
11 would stay the same. But they would be as defined in
12 today's statute. And if there's a favorable change,
13 then I suppose PSNH gets it. If it's an unfavorable
14 change, PSNH doesn't get it, or our customers don't.
15 If there's an increased value in environmental
16 attributes in the future, if there's a CO2 cap and
17 trade system where there's value, we get that, too.
18 So there really -- this power purchase agreement
19 does two things: It specifies the price that we will
20 pay for environmental attributes, and then it ensures
21 that we get a hundred percent of those attributes,
22 whatever they are and wherever they are. It could be
23 attributes that are in the state of New Hampshire.
24 They could be attributes in New England. They could

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1 be attributes worldwide or national. They could
2 be -- as I said, if there's CO2 emission laws in the
3 future that this plant creates value, we get it.
4 So, you know, I know you're trying to paint an
5 adverse scenario, but it could just as readily be a
6 favorable scenario.
7 So what this provision's all about is simply to
8 the create the price stability they said they need
9 and to do financing with protection on risk. And
10 like I said, we insisted on all environmental
11 attributes. So, whatever the changes are in laws in
12 any state or any country, if they're favorable, we
13 take advantage of them.
14 Q. So what you're asking the Commission to actually
15 approve is your entry into a contract for
16 environmental attributes, not necessarily entering
17 into a contract with New Hampshire Class I RECs, as
18 the New Hampshire legislature defines that term, over
19 time.
20 A. (Mr. Long) Well, we clearly have designed this to
21 meet the New Hampshire RPS requirement. But now
22 you're getting into hypotheticals with me. And if
23 the New Hampshire RPS requirement never changes, then
24 that's what will be done.

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1 But as I said, in the event that there would be
2 a change, then we design this to make sure that we
3 get the environmental attributes. And that's, I
4 think, a very good design feature. We could have
5 said that we only get New Hampshire environmental
6 attributes. But not knowing what national laws will
7 be in the future and what value might be created, we
8 just wanted to make sure that our customers get a
9 hundred percent of whatever that value is.
10 Q. So you're asking the PUC to approve the past going
11 rates of environmental attributes, which may not be
12 New Hampshire Class I RECs as the New Hampshire
13 legislature defines that term, over time; is that
14 rights?
15 A. (Mr. Long) No. No, that's not correct. We're asking
16 the Commission to approve a pricing structure in the
17 contract that has some protections in it to protect
18 against possible changes in the future.
19 Q. Now, you mentioned the number of RECs -- or I'm
20 sorry -- the price protection for RECs under this
21 contract. And I'd like to direct your attention to
22 Section 1.57, and specifically to the section that
23 begins, "Provided further." Can you read "provided
24 further" to the end of that term, please.

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1 A. (Mr. Long) "And provided further that, for the term
2 hereof, the renewable products payment shall not be
3 less than the alternative compliance payment
4 schedule, in parens, including future adjustments,
5 end parens, set forth under New Hampshire RSA 362-F
6 for RECs produced by New Hampshire Class I renewables
7 as in effect on the date hereof."
8 And that's really what I just described.
9 Q. So what that describes is that, no matter what
10 happens with regard to the actual price in the market
11 of New Hampshire Class I RECs, the price that PSNH
12 will pay will never be less than that which is set
13 forth in the RPS statute today?
14 A. (Mr. Long) No, that's not correct. You said
15 regardless of what the price is in the market. What
16 this says is, is this pricing mechanism is based on
17 the New Hampshire law as it exists today. And if the
18 law is changed, the pricing schedule will stay the
19 same. And what goes hand in hand with that is that
20 we get all of the entire environmental attributes
21 that go with the purchase.
22 Q. Okay. So then, who bears the risk under this
23 contract that the legislature might repeal the RPS
24 and do away with the ACP payment?

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1 A. (Mr. Long) Well, I think you have to look at, the
2 customers pay the same price regardless of the
3 various scenarios that you're mentioning. So the
4 price to customers is the same, regardless. And then
5 you might be hypothesizing what additional values or
6 diminishment of values might accrue in the future.
7 And whatever the value of environmental attributes in
8 the future goes to our customers.
9 Q. And they'll always be priced based upon the New
10 Hampshire ACP as it exists today?
11 A. (Mr. Long) Yes.
12 Q. Even if the RPS is repealed?
13 A. (Mr. Long) Yes.
14 Q. Even if there is no compliance requirement for PSNH
15 to purchase New Hampshire Class I RECs?
16 A. (Mr. Long) Yes. If New Hampshire were to say
17 renewables are no longer important to New
18 Hampshire -- you know, I mean, certainly we can
19 hypothesize an infinite number of scenarios.
20 And again, rather than make the assumption of
21 what might happen in the future, we wanted to do two
22 things: We wanted to make sure that there was a
23 price firmness; and secondly, that all of the
24 environmental attributes went to customers. And I

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1 could hypothesize scenarios that go the other
2 direction just as well.
3 Q. Well, let's do that, because the contract covers
4 both. Let's go back to Section 23.1. Can you read
5 the first sentence, please?
6 A. (Mr. Long) If during the term a change in law occurs
7 or any of the ISO New England documents are changed
8 resulting in elimination of or a material adverse
9 effect upon the material right or obligation of a
10 party, then unless such change in law is otherwise
11 specifically addressed herein, the parties will
12 negotiate in good faith in an attempt to amend this
13 agreement to incorporate such change as they mutually
14 deem necessary to reflect the change in law or the
15 change in any ISO New England documents.
16 Q. So we have established that a facility's eligibility
17 to produce New Hampshire Class I RECs under this
18 contract is specifically dealt with. And we've
19 addressed that the price for those New Hampshire
20 Class I RECs in this contract is specifically dealt
21 with. And if that ACP goes up, what happens?
22 A. (Mr. Long) If the alternative compliance payments in
23 the New Hampshire law increase?
24 Q. Yes.

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1 A. (Mr. Long) The price does not change.
2 Q. Okay. The yearly adjustments to that current ACP,
3 are they always included?
4 A. (Mr. Long) Are they what?
5 Q. The Commission must every year determine how to
6 escalate the ACP payment and whether to escalate it.
7 If next year -- if the Commission does escalate that
8 ACP payment, is that a change in law?
9 A. (Mr. Long) No, that's an application of the current
10 law.
11 Q. Okay. So, Laidlaw would get the benefit of that
12 escalation; is that right?
13 A. (Mr. Long) Well, the price would change based on
14 that, but it's a discounted price.
15 Q. So if the change in law is a federal RPS that then
16 preempts the New Hampshire RPS, and you had agreed
17 that you would pay a percentage of the New Hampshire
18 ACP but this federal change in law comes along, what
19 do you pay for RECs?
20 A. (Mr. Long) No change in the payment per RECs. We
21 would realize greater value.
22 Q. I'd like you to look at IPP Exhibit 10, please -- I'm
23 sorry -- IPP 11, which asked PSNH to state whether
24 any continued payment would be required for RECs

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1 under the PPA if at any point in time the New
2 Hampshire General Court were to repeal RSA 362-F.
3 And I believe that, in your testimony today,
4 Mr. Long, you told me that, if the court repealed RSA
5 362-F, the ratepayers would continue to pay the New
6 Hampshire Class I RECs, which you would now call
7 environmental attributes; is that right?
8 A. (Mr. Long) I missed the last part. What did you say?
9 You said what you would call something.
10 Q. I believe the substance of your testimony was that,
11 if the New Hampshire legislature were to repeal
12 RSA 362-F, that your ratepayers would continue to pay
13 for the New Hampshire Class I RECs which you have
14 just now called, generally, environmental attributes.
15 A. (Mr. Long) I think the contract called it -- refers
16 to it to be all-inclusive.
17 Q. And the contract would call for that payment to
18 continue; correct?
19 A. (Mr. Long) Under what is today's RPS law.
20 Q. And we asked you whether, if the renewable portfolio
21 eligibility requirements were to change, such that
22 the facility were to become ineligible for Class I
23 REC certification, or the production of New Hampshire
24 Class I RECs, your ratepayers would continue to pay

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1 for New Hampshire Class I RECs under the contract,
2 even though there were no compliance requirement
3 under the statute.
4 A. (Mr. Long) And that's what I've already said to you
5 several times. The payments stay the same, and
6 they're based on current law and the other thing that
7 the contract provides for on 1.16, the definition of
8 environmental attributes. So we are buying all the
9 environmental attributes. Specifically, we're trying
10 to comply with New Hampshire law. But we're also
11 trying to address the situation of what if something
12 changes in the future.
13 Q. And we also asked you what would happen if the
14 facility were ineligible for any other substitute
15 environmental attribute subsidy or incentive program.
16 Would your ratepayers continue to have to make the
17 payment under this PPA if those sort of subsidies for
18 renewable energy were to disappear?
19 A. (Mr. Long) Well, the prices in the contract are as I
20 said. You know, I can't imagine -- I can't right now
21 say what circumstances might be in dispute or
22 litigation with Laidlaw. And I think that's what the
23 data response is just saying. We don't know all the
24 specifics. We don't know if we'd have a dispute with

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1 Laidlaw. But what I'm telling you is what is the
2 intent of the contract, which is for buying
3 environmental attributes, the price is as set.
4 Q. In the meantime, your ratepayers are at risk;
5 correct?
6 A. (Mr. Long) As I said, they could gain -- it depends
7 on what happens in the future. They could do quite
8 well. But you're painting a scenario that's --
9 Q. If I may interrupt, that's not really the question
10 that I asked. The question that I asked was: What
11 would happen if the facility were not eligible for
12 any subsidy program or the subsidy programs
13 disappeared?
14 A. (Mr. Long) In any part of the United States or New
15 England? Is that what you're saying?
16 Q. The facility would not be eligible.
17 A. (Mr. Long) Well, yeah. If it's not eligible, it's
18 not eligible. But you can have circumstances that go
19 the other direction. In fact --
20 Q. I understand that. But in that situation where the
21 facility --
22 (Court Reporter interjects.)
23 A. (Mr. Long) The fact that the national government is
24 looking at RPS standards suggests that, if anything,

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1 there may be more requirements. And the fact that
2 the federal government is looking at cap and trade
3 programs for CO2, and EPA is looking at regulating
4 CO2, there actually could be further advantages in
5 the future.
6 And I just point out that you're picking the
7 worst-case scenarios. And probably more likely be
8 positive scenarios in the future, in our opinion.
9 Q. In your opinion, is that a risk that your
10 shareholders are willing to take?
11 A. (Mr. Long) Our shareholders get no gain on this. So,
12 no, we can't create risk for shareholders because
13 there's no gain here for shareholders. That would be
14 very one-sided.
15 Q. And this is not one-sided.
16 A. (Mr. Long) No.
17 MR. BERSAK: It's argumentative.
18 Object to that question.
19 BY MR. SHULOCK:
20 Q. I'd like you to turn to Exhibit IPP 12, please. This
21 is a question that PSNH originally did not want to
22 answer. And the question is: Does the PPA provide
23 that the amount of New Hampshire Class I RECs
24 available to be purchased under the PPA during this

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1 term will, (A), not be affected by a change in law;
2 or, (B), be determined under and by the term of RSA
3 362-F in effect as of June 8th, 2010?
4 And you see down below that it says that the
5 Commission says, "We find responses to these data
6 requests will likely lead to the discovery of
7 admissible evidence and grant the motion to
8 compel..." Can you please read that answer?
9 A. (Mr. Long) "Section 1.44 of the PPA provides that New
10 Hampshire Class I renewable energy credits, or New
11 Hampshire Class I RECs, shall mean REC produced
12 in" -- "or, in the event of a change in law that
13 would have been produced by the facility pursuant to
14 its qualification as a renewable energy source as
15 defined in New Hampshire Class I renewable statutes
16 at NH RSA 362-F, as in effect on the effective date,
17 in capital letters, and regardless of any subsequent
18 change in law, in capital letters. This provision
19 defines New Hampshire Class I RECs as that set forth
20 in RSA Chapter 362-F as that law was in effect on the
21 effective date of the PPA, i.e., June 8, 2010. If a
22 future change in law somehow affected that
23 obligation, the impact would be addressed pursuant to
24 Section 23.1."

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1 Q. And again, 23.1 applies to situations that are not
2 otherwise explicitly addressed in the contract;
3 correct?
4 A. (Mr. Long) Well, you have to take the contract in its
5 totality. And as I said, it says the intent of the
6 parties is that such amendment reflects as closely as
7 possible the intent and substance of the economic
8 bargain before the change in law.
9 So I think those principles guide us. And if
10 the parties disagree, then there's a method for
11 resolving the dispute.
12 Q. So, exactly what would that disagreement be?
13 A. (Mr. Long) I don't have any today, so I can't tell
14 you what it would be.
15 Q. Well, let me step back. If the New Hampshire
16 Legislature were to decide to change the New
17 Hampshire Class I eligibility requirements, and the
18 Commission, as a result of that, were required to
19 revoke the Laidlaw facility's New Hampshire Class I
20 REC eligibility, they'd still be eligible under the
21 contract, correct, to produce New Hampshire Class I
22 RECs, as defined under the contract; right?
23 A. (Mr. Long) I don't know if "eligible" is the right
24 word. The payments would not change, as I've said

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1 several times. And if there was a change in law,
2 we'd sit down with Laidlaw and look at the change and
3 the specifics of the change and how we might mitigate
4 that change and -- to establish the value. That was
5 the bargain that we both made.
6 Q. Well, what is the purpose of the phrase, "that unless
7 a change in law is otherwise specifically addressed
8 herein"?

9 A. (Mr. Long) I read that as saying the contract is
10 taken in its totality.

11 Q. Okay. Thank you.
12 I'd like you to look at Exhibit IPP 13, please.
13 This question asked: Does the PPA provide that
14 renewable products payment, as that term is defined
15 in the PPA, will never be less than that which would
16 result under the ACP schedule and mechanism in RSA
17 362-F as it exists on June 8, 2010, even if, during
18 the PPA term, RSA 362's ACP schedule and mechanism
19 were subsequently repealed or amended to produce a
20 lower alternative compliance payment? Please explain
21 your answer.
22 And I believe you answered in your testimony to
23 a similar question, that the payment would continue,
24 and it would -- even though that ACP schedule had

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1 been substantially changed or repealed; is that
2 correct?

3 A. (Mr. Long) Yes. Again, I think we've answered this
4 several times, that the payments stay the same. And
5 the words I read to you earlier talk about RSA 362-F,
6 as it exists on the effective date of the contract.
7 And that's what we said several times already.
8 CHAIRMAN GETZ: Mr. Shulock, seems
9 like we've covered this ground more than once.
10 MR. SHULOCK: Yeah.
11 BY MR. SHULOCK
12 Q. I'd like to refer you to Section 6.12, small letter
13 a, small Roman Numeral ii. This is the wood price
14 adjustment clause of the contract, isn't it?

15 A. (Mr. Long) Yes.

16 Q. And this clause adjusts the energy price with
17 reference to a benchmark fuel price established at
18 Schiller Station and changes in that benchmark fuel
19 price; is that right?

20 A. (Mr. Long) Yes.

21 Q. And just generally, the way that this works, if the
22 benchmark -- if you're on target with the benchmark,
23 and three months later or six months later there's an
24 increase in the price of biomass fuel at Schiller

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1 Station, there will be an adjustment made to the
2 energy price paid to Laidlaw. And generally
3 speaking, if the increase in the price of wood at
4 Schiller is positive, the increase in the energy
5 price paid to Schiller will also -- I'm sorry -- to
6 Laidlaw will also be positive. It won't be one for
7 one, but it will be positive; is that right?

8 A. (Mr. Long) Yes.

9 Q. And vice versa.

10 A. (Mr. Long) Yes.

11 Q. Now, Schiller Station is a 50-megawatt facility, and
12 Laidlaw is now proposing a 75-megawatt facility; is
13 that right?

14 A. (Mr. Long) Yes, plus or minus. Schiller operates a
15 little less than 50. But, yes.

16 Q. And between the two, you're at least going to be
17 using 1,250,000 tons of wood, and maybe more now that
18 the size has increased?

19 A. (Mr. Long) Does that sound right?

20 A. (Mr. Large) In that neighborhood, yes.

21 A. (Mr. Long) In that neighborhood.

22 Q. And the Laidlaw facility will be using the majority
23 of that; correct?

24 A. (Mr. Large) I believe the ratio is about 750,000 at

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1 Laidlaw and 500,000 at PSNH's Schiller Unit 5.

2 Q. Now, has PSNH considered or evaluated the
3 circumstances in which the Laidlaw facility and
4 Schiller Station Unit 5 may compete for biomass fuel?

5 A. (Mr. Large) Are you referring to IPP 14, Mr. Shulock?

6 Q. I do have that here in front of me, sir. But this is
7 testimony --

8 A. (Mr. Large) The question looks --

9 Q. This is a testimony question. Is the answer the
10 same?

11 A. (Mr. Large) Yes, it is.

12 Q. So you don't know whether Laidlaw, being in the
13 market, is going to cause Schiller's prices -- or you
14 don't know whether Laidlaw will be competing with you
15 for fuel; is that correct?

16 A. (Mr. Large) We've not done an analysis to determine
17 that Laidlaw will be competing with us for fuel.

18 Q. In fact, you have no documentation about who their
19 wood suppliers will be?

20 A. (Mr. Large) May I have that question back, please?

21 Q. We asked you for documentation -- we asked you for
22 the names of the wood suppliers, and you said you had
23 no documentation regarding that.

24 A. (Mr. Large) Their wood suppliers? Sorry,

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1 Mr. Shulock, I didn't hear which wood suppliers you
2 were referring to.
3 Q. Laidlaw's wood suppliers.
4 A. (Mr. Large) Other than what's been provided in the
5 SEC documentation. And that defines where they
6 anticipate their wood supply coming from at initial
7 operation, which hasn't changed over time.
8 Q. So you haven't done any sort of projections or
9 analyses or sensitivity studies as to whether a new
10 75-megawatt facility is going to start raising the
11 wood price at Schiller?
12 A. (Mr. Large) We have not done those analyses. We
13 understand that the wood basket is substantially
14 large in the state of New Hampshire and New England,
15 and we have high expectations that there will not be
16 a negative influence in the price of wood at Schiller
17 Station as a result of Laidlaw's operation.
18 Q. And that's based only on your understanding that the
19 wood basket is large?
20 A. (Mr. Large) We have the historic understanding of
21 what's transpired in the wood fuel markets when
22 Schiller 5 came into operation on wood, and that data
23 would not suggest that there was a substantial change
24 in the price of wood as a result of 500,000 tons of

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1 new wood coming to market. And we believe that that
2 will persist in the future.
3 Q. I'd like you to look at IPP 15. I'm sorry. I
4 already asked you this question. This was a question
5 where we had asked you whether you knew who Laidlaw's
6 proposed biomass suppliers were, and you said you had
7 no such documentation.
8 A. (Mr. Large) That's correct.
9 Q. I'd like you to look at IPP 16. The IPPs asked
10 whether, under PPA Section 6.1.2(a), the price paid
11 to Laidlaw for energy might increase, even if
12 Laidlaw's fuel costs did not increase, and whether
13 you had conducted any studies, analyses or
14 evaluations of the overall cost of energy price
15 increases that are not associated with actual fuel
16 price increases at the Laidlaw facility. And I know
17 I added a few words there just to make it easier for
18 people who don't have it in front of them.
19 And what was your answer?
20 A. (Mr. Labrecque) Would you like me to read it?
21 Q. Yes.
22 A. (Mr. Labrecque) "The wood price adjustment is
23 described in Article 6.1.2(a) and is indexed to the
24 cost of biomass fuel at Schiller Station. PSNH has

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1 no further information which is responsive to the
2 question."
3 Q. When you say you have "no further information
4 responsive to the question," that means -- I take it
5 that means that you have not done any studies,
6 analyses or evaluations of whether energy prices --
7 energy price increases would or would not be
8 associated with actual fuel price increases at the
9 Laidlaw facility; is that right?
10 A. (Mr. Labrecque) Well, the question really asked about
11 the wood price adjustment of 6.1.2(a). It's fairly
12 self-explanatory how that works. It goes up or down,
13 benchmarked to \$34 delivered to Schiller Station. So
14 I'm not understanding the full depth of the probing
15 here.
16 Q. The way that 6.1.2 is written, is it indifferent to
17 what the real actual fuel costs are at the Laidlaw
18 facility?
19 A. (Mr. Labrecque) It's indexed to the cost of fuel at
20 Schiller.
21 Q. And not to the cost of fuel at Laidlaw?
22 A. (Mr. Labrecque) Correct.
23 Q. Okay. So what happens in the situation where wood
24 fuel prices at Schiller rise while wood fuel prices

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1 at Laidlaw decline?
2 A. (Mr. Labrecque) We would administer the wood price
3 adjustments in accordance with Article 6.1.2(a), and
4 the increase relative to \$34 would result in a change
5 to the PPA energy price.
6 Q. So the PPA energy price would go up even as the cost
7 of the Laidlaw -- even as Laidlaw's cost for
8 producing energy went down; is that right?
9 A. (Mr. Labrecque) In either direction, what you're
10 saying is how the contract would be administered, up
11 or down.
12 Q. And have you done any studies, analyses, projections,
13 or anything to look at that differential, or the
14 possibility of that differential?
15 A. (Mr. Labrecque) No.
16 Q. Now, I think, Mr. Labrecque, it's fair to describe
17 your testimony as an indication that PSNH believes
18 that benchmarking the price of fuel at Schiller
19 Station is good because the PUC reviews those
20 purchases at Schiller Station; right?
21 A. (Mr. Labrecque) That was one of the positives in our
22 perspective to tying the index price to a regulated
23 power plant.
24 Q. And what is the purpose of the PUC's review of those

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1 wood prices at Schiller Station?

2 A. (Mr. Labrecque) In general, to review operations for
3 prudence.

4 Q. Okay. And if your -- I'm not trying to cast
5 aspersions here. I'm just trying to test how the
6 provisions work in the contract.

7 If PSNH were to be imprudent in its wood
8 purchases, what would the PUC likely do?

9 A. (Mr. Labrecque) I can't respond to that.

10 Q. Would it pass those imprudently incurred costs onto
11 ratepayers, or would it require some other accounting
12 of those?

13 A. (Mr. Labrecque) I can't respond. I don't -- the
14 situation you're describing is purely speculative. I
15 don't know what the Commission would order. I don't
16 even know the principles of the case that you're
17 asking me to comment on.

18 Q. Generally speaking, does the Public Utilities
19 Commission pass through to ratepayers expenses of a
20 utility that the Commission knows to have been
21 imprudently incurred?

22 A. (Mr. Long) Somebody other than --

23 A. (Mr. Labrecque) I'll defer to either of these two
24 fine gentlemen sitting next to me.

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1 Q. This is a general question.

2 A. (Mr. Long) No, I know. I think maybe I can help you.
3 I mean, if you look at 6.1.2(ii), it says that this
4 adjustment factor is based on the actual cost of
5 Schiller. So the calculations would be based on
6 actual cost.

7 What the Commission allows or doesn't allow us
8 to pass on to our own customers for our own power
9 plant really wouldn't affect the WPA.

10 Q. So, if PSNH were imprudent in its wood price
11 purchases, PSNH wouldn't be able to pass those costs
12 on to its own ratepayers. But it would still have to
13 raise the energy price paid to Laidlaw, wouldn't it?

14 A. (Mr. Long) Yeah, in your hypothetical. And I think
15 if you want to play that out, whatever it is -- and
16 Mr. Labrecque says we don't know the specifics of
17 your hypothetical -- and this is just pure
18 hypothetical. But if the Commission were to find
19 that some practice of PSNH were imprudent, well, then
20 you can bet that we would change our practice. So
21 that would change the going-forward price for Laidlaw
22 as well.

23 And that's the sort of protection that we're
24 trying to have in here: A benchmark that had full

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1 review by a governmental body, that in the event that
2 we didn't do something correctly, we would have to
3 change in going forward.

4 You got to remember, this is a 20-year contract.
5 So, yeah, there might be a short term where Laidlaw
6 doesn't get harmed. But our customers get protected
7 because we would then change our fuel practices to
8 whatever the Commission said was prudent.

9 Q. Does the Commission have the authority to require
10 PSNH to do a "clawback" to recoup from Laidlaw that
11 extra energy price that is paid to it as a result of
12 PSNH's imprudent wood fuel procurement practices, and
13 not as a hypothetical?

14 A. (Mr. Long) No. As I said earlier, the section I
15 referred to, it refers to there are actual costs.
16 And I already described what the effect is of that
17 and any further action, how that would impact
18 Laidlaw.

19 Q. PSNH doesn't forecast REC prices; is that right?

20 A. (Mr. Labrecque) That's correct.

21 Q. So, Mr. Labrecque, your answer to Staff 1,
22 Q-Staff-008, which is in IPP Exhibit 17, would remain
23 correct? PSNH does not forecast REC prices?

24 A. (Mr. Labrecque) That's correct.

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1 Q. And the PPA -- I'm sorry -- PSNH has not studied or
2 analyzed the impact of the PPA on REC markets; is
3 that right?

4 A. (Mr. Labrecque) No. Well, in our rebuttal testimony
5 we did include some fundamental overviews of the
6 total New England supply and demand, where we
7 specifically looked at, over the next, you know, 10
8 to 15 years, the rapid escalation in the region-wide
9 demand for Class I renewables and what type of new
10 construction would be required to match that demand.
11 We have done that.

12 Q. So the wood IPPs asked you the question: Please
13 provide all studies or analyses relating to the
14 impact of the PPA on markets for electricity,
15 capacity, fuel or RECs, or other market impacts for
16 jobs, economic output, gross state product, household
17 earnings and tax revenues.

18 And your answer was: PSNH has no studies or
19 analyses relating to the impact of the PPA on the
20 markets for electricity, capacity, fuel or RECs.
21 Did that change in the interim? So what has
22 your --
23 (Court Reporter interjects.)

24 A. (Mr. Labrecque) Yeah, the question again? Did what

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1 change in the interim? From when to when?
2 Q. From the time that you answered this discovery
3 request to the time that you --
4 A. (Mr. Labrecque) Which one?
5 Q. This is Staff -- oh, I'm sorry. This is IPP 18,
6 which is Concord Steam Company's first set of data
7 requests, Question 8.
8 A. (Mr. Labrecque) Okay.
9 MR. BERSAK: Mr. Chairman, just a
10 point of order going forward. Concord Steam
11 Corporation's data requests, in or out?
12 CHAIRMAN GETZ: Responses are out.
13 The fact that it may be a question from Concord Steam
14 doesn't necessarily preclude it.
15 MR. BERSAK: Thank you.
16 BY MR. SHULOCK:
17 Q. So is --
18 A. (Mr. Large) as Mr. Labrecque just indicated, the
19 analysis that was done was an examination of demand
20 for RECs. And this question asks for the impact of
21 the PPA on markets, which is the supply associated
22 with this product -- this contract.
23 Do I have that right?
24 Q. So you gave general testimony about the REC markets

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1 that's unrelated to the PPA.
2 A. (Mr. Large) Testimony about the demand for RECs that
3 will be undertaken as a result of --
4 (Court Reporter interjects.)
5 A. (Mr. Large) Our rebuttal testimony speaks to the
6 impact associated with the demand for RECs over time
7 with 1 percent increases appearing or occurring year
8 over year for a number of years into the future.
9 That's the demand side of the equation, not the
10 supply side of the equation, which is my
11 understanding of what this question asks.
12 Q. So then, the answer to this question holds true:
13 PSNH has not studied or analyzed the impact of the
14 PPA on the markets for electricity, capacity, fuel or
15 RECs.
16 A. (Mr. Long) Yeah. I think to clarify this, it's
17 probably easiest just to look at our Rebuttal 6
18 attachment. And that information that Mr. Labrecque
19 was referring to is from ISO New England. It's an
20 ISO New England study.
21 Q. Does anyone on the panel know, after having studied,
22 analyzed or reviewed, what will happen to the market
23 price for New Hampshire Class I RECs when the Laidlaw
24 facility comes online?

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1 A. (Mr. Long) I would say we don't know that answer
2 because the market is a New England market, and New
3 Hampshire RECs are just a part of it. As this
4 exhibit, Rebuttal 6, shows, there's a high likelihood
5 that there will be a shortage in the markets. So
6 that would suggest that REC prices will approach the
7 ACP, the alternative compliance payment.
8 Q. So this is a suggestion. It's not an analysis, study
9 et cetera.
10 A. (Mr. Long) Well, it's an analysis by the ISO New
11 England based on what's in their queue for renewable
12 projects that might qualify in their estimation of
13 the New England-wide requirement. So it's an ISO New
14 England study for sure. It's not ours.
15 Q. Well, CSC's question didn't ask you just for your
16 studies, did it?
17 A. (Mr. Long) Well, I think it would be pretty
18 impossible for us to assemble all the studies in the
19 world that relate to this. I mean, we were answering
20 it for what we have done. I don't think it's our
21 need to research for others.
22 Q. But you saw fit to include it in your rebuttal
23 testimony. Why not provide it as a data response?
24 A. (Mr. Long) This information is available to everyone

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1 --
2 MR. BERSAK: Mr. Chairman --
3 CHAIRMAN GETZ: I think we're going
4 too far afield here in speculating about what someone
5 who's not here meant to include in their question.
6 Let's move on.
7 BY MR. SHULOCK:
8 Q. So, has PSNH studied or analyzed the impact of a
9 75-megawatt wood-burning facility, what impact that
10 will have on the cost of Massachusetts Class I RECs?
11 A. (Mr. Labrecque) No.
12 A. (Mr. Long) No.
13 Q. On the Connecticut Class I REC market?
14 A. (Mr. Long) You're talking about prices, I assume, in
15 your question. And we have not done an analysis of
16 prices.
17 Q. What do you mean, sir?
18 A. (Mr. Long) The chart that I'm referring to is a
19 supply/demand chart, not a price chart.
20 Q. Okay. So you say it's a New England market. Will
21 you be selling the Laidlaw RECs into the New England
22 market?
23 A. (Mr. Long) There's a possibility that -- I mean, we
24 may sell RECs into the market for a short period of

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1 time in the first year or two that Laidlaw comes into
2 service.
3 Q. And after that first year or two, you wouldn't sell
4 any Laidlaw RECs into the market?
5 A. (Mr. Long) No. We'd be using them for our own
6 purposes.
7 Q. What if the price in Connecticut were higher than the
8 alternative compliance payment in New Hampshire?
9 A. (Mr. Long) Then it means -- well, for us, a higher
10 ACP in Connecticut doesn't affect us because we're
11 bound by the New Hampshire ACP.
12 Q. Okay. What if the price in Connecticut were higher
13 than the 80 or the 70 or the 50-percent price that
14 you would be paying under the Laidlaw contract?
15 A. (Mr. Long) Well, I think we're just saying that if
16 the market prices are high, then we got a good deal,
17 that we are meeting our requirements at a very good
18 price.
19 Q. I'm not asking you whether you got a good deal. I'm
20 asking you where are you going to sell those RECs.
21 A. (Mr. Long) As I said earlier, we use the RECs for our
22 own purposes. And you're hypothesizing that the
23 market pricing will be high. Well, that's good, no
24 matter how you look at it. Either if we didn't have

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1 to go out to the market to purchase RECs or, if we
2 have more RECs in the first year or two, we can go to
3 market and sell them, you know, for a gain.
4 Q. So I'd like you to look at IPP 19, in which PSNH,
5 Mr. Labrecque, is testifying. It says, "The PPA does
6 not require a specific disposition of the RECs
7 following delivery to PSNH. PSNH intends to use the
8 RECs in a manner that maximizes their benefit for
9 retail customers." Is that what you were just
10 describing, Mr. Long?
11 A. (Mr. Long) Yes. And if you want to get a little more
12 complicated, if the market price is far higher than
13 the REC price in New Hampshire -- and it's really
14 hard for me to imagine a scenario like that -- then
15 we'd sell it into the market and pay the New
16 Hampshire ACP and still have a net gain. I mean,
17 we'd do whatever it would take to maximize the value.
18 Q. So what happens if the REC market price in New
19 Hampshire, Connecticut, Massachusetts, Rhode Island,
20 New York, anywhere that you can sell them, is lower
21 than the price you're paying in the contract?
22 A. (Mr. Long) In that case, we'd still pay the price in
23 the contract and we wouldn't have the opportunity to
24 get a gain.

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1 Q. Now, you also sell Schiller RECs into those markets;
2 correct?
3 A. (Mr. Labrecque) Yes.
4 Q. Have you analyzed at all what's going to happen to
5 the value that you'll be able to get for Schiller
6 RECs once the Laidlaw facility enters the market?
7 A. (Mr. Labrecque) I mean, between now and then, there
8 will be a significant increase in the demand for RECs
9 in New England. You know, like we said, we're not
10 forecasting the 2014 price of RECs in the various New
11 England states. But we do know that demand is going
12 up significantly year over year, and that would
13 suggest an increase in the price. And the increase
14 in demand is much greater than a 70-megawatt biomass
15 plant can satisfy.
16 A. (Mr. Long) And just to be clear, the Schiller RECs
17 are Class I RECs, just like a REC from a wind turbine
18 would be a Class I, or an incremental hydro would be
19 Class I. So, you know, it's -- your hypotheticals
20 could apply to more wind or less wind, or any other
21 renewable source.
22 Q. I'd like you to take a look at IPP Exhibit 20. This
23 is an overview of some proposed rule changes in
24 Massachusetts to their biomass eligibility

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1 requirements. This is one of those regulatory risks
2 which I was speaking to before.
3 MR. BOLDT: Mr. Chairman, may I
4 interrupt briefly? Maybe I don't understand where
5 he's going. The relevance of a proposal in
6 Massachusetts seems to be beyond the pale here.
7 CHAIRMAN GETZ: Mr. Shulock, response?
8 MR. SHULOCK: Yes. PSNH says that it
9 intends to dispose of Schiller RECs in accordance
10 with a cost-sharing mechanism that was approved by
11 this Commission in the Schiller docket. I'm not
12 really going to speak much to the actual cost-sharing
13 mechanism. I understand that OCA and Staff have a
14 number of questions about that.
15 But because of that cost-sharing mechanism which
16 PSNH intimates requires it to sell its RECs into the
17 New England REC market rather than using it to
18 satisfy New Hampshire compliance requirements --
19 CHAIRMAN GETZ: Well, let me put it
20 this way: I'm going to let you inquire about this
21 because I think there may be some relevance. I'm
22 getting more and more concerned, though, about, you
23 know, repetitive cross-examination evidence and
24 cumulative cross-examination evidence. But let's see

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1 if we can move it along.
2 MR. SHULOCK: I appreciate that.
3 MR. BERSAK: Mr. Chairman, I do have a
4 question about IPP 20. I'm not sure what this
5 document is. I'm not sure where it came from. I'm
6 not sure who prepared it. I'm not sure there's a
7 foundation for it. Perhaps counsel for the wood
8 IPPs --
9 CHAIRMAN GETZ: Well, that's a
10 different issue.
11 MR. BERSAK: -- can explain what this
12 is and who prepared it and where it came from.
13 MR. SHULOCK: This comes from the
14 Mass. DOER, Department of Energy web site. It
15 purports to be an overview of changes that the
16 Department of Energy Resources intends to make to its
17 biomass eligibility requirements for the
18 Massachusetts RPS. And my question for the panel is
19 whether they are familiar or whether PSNH is aware
20 that Massachusetts is considering changing their
21 requirements.
22 A. (Mr. Large) Yes, Mr. Shulock, I am aware.
23 BY MR. SHULOCK:
24 Q. And in fact, PSNH, through Northeast Utility Systems,

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1 filed comments on that proposed rule change; isn't
2 that correct? If you look at IPP 21 --
3 A. (Mr. Large) If you look at IPP 21, that is correct.
4 Q. Okay.
5 MR. BOLDT: Same objection on
6 relevance, your Honor.
7 CHAIRMAN GETZ: It's overruled. Let's
8 continue.
9 BY MR. SHULOCK:
10 Q. Now, you understand that these proposed changes would
11 put in place some sustainability requirements for
12 biomass fuel harvesting and the eligibility of
13 biomass fuel for the Massachusetts Class I RPS; is
14 that right?
15 A. (Mr. Large) There have been draft revisions that have
16 been circulated, and we still await the proposed
17 final regulations. So, what those will be is not
18 something we could begin to speculate about. We did
19 comment on these draft regulations as they were
20 proposed at that point in time.
21 Q. And specifically, PSNH has requested a grandfathering
22 clause for existing facilities; is that correct?
23 A. (Mr. Large) As a minimum, associated with our
24 Schiller Unit 5, yes.

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1 Q. And that's because, if these regulations were to go
2 into effect and those biomass sustainability
3 guidelines became the law, Schiller Station's biomass
4 fuel would not comply; is that right?
5 A. (Mr. Large) If all of those "ifs" were to be, it
6 would be likely that Schiller 5 would not qualify.
7 If a grandfathering were provided and similar
8 regulations went into effect, it would essentially
9 prevent any future development of biomass in the
10 state of Massachusetts, thereby limiting supply.
11 Q. Okay. And has PSNH studied what would happen to the
12 cost -- well, first of all, let me step back.
13 PSNH's comments seem to indicate that the
14 biomass fuel does not and could not comply with the
15 rules. Is it possible, at a higher price for a wood
16 fuel, for PSNH to attract enough biomass fuel to --
17 that would meet the guidelines to have PSNH continue
18 to qualify as a Massachusetts Class I facility?
19 A. (Mr. Large) I'm not aware of any linking between
20 price paid and the ability to satisfy these
21 requirements as they were proposed in September.
22 Q. Okay. So your understanding is that PSNH would
23 simply have to drop out of the Mass. I program at
24 this point?

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1 A. (Mr. Large) Or consider alternatives associated with
2 the operation that would satisfy the regulations as
3 they are finally drafted, or be successful at
4 achieving the grandfathering request that we have.
5 Whatever the final rules may state.
6 Q. Well, with regard to the -- okay.
7 Well, with regard to the -- there's a second
8 eligibility requirement that they're considering, and
9 that has to do with efficiency. Can you explain that
10 to me?
11 A. (Mr. Large) Yes. As I understand it, the thermal
12 efficiency of the heat input converted to megawatt
13 hours output would need to achieve a 60-percent
14 efficiency rating in order to receive one full REC,
15 as shown on the top of Page 2. That was what was
16 proposed in September.
17 Q. And isn't there a provision for achieving 40-percent
18 efficiency?
19 A. (Mr. Large) My read of this, a sliding scale would be
20 applied between 60 percent and 40 percent.
21 Q. And at 40-percent efficiency, you would get a half of
22 a Massachusetts REC; is that right?
23 A. (Mr. Large) Well, this document here says a fraction.
24 It doesn't define.

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1 Q. Okay. So, a fraction.
2 And as I read IPP 20, PSNH's comments, I
3 understand it to mean that the Schiller Unit doesn't
4 even meet the 40-percent efficiency standard?
5 A. (Mr. Large) As it's currently operating, that is
6 correct.
7 Q. Okay. And if these rules go into effect, that means
8 that Schiller must drop out of the Massachusetts
9 Class I market by 2015; is that right?
10 A. (Mr. Large) Depends, again, on what the final rules
11 say. So I couldn't speculate on if that will or will
12 not be the case. These rules are long overdue, which
13 suggests that considerable thought and consideration
14 is being given to what was previously drafted.
15 Q. And I understand your position. But if they go into
16 effect as proposed, Schiller would have to drop out
17 of Massachusetts Class I in 2015; correct?
18 A. (Mr. Large) Under the current configuration of the
19 unit, it would not qualify absent a grandfathering.
20 Q. And that leaves what markets available for Schiller
21 Class I RECs?
22 A. (Mr. Large) It would allow the Rhode Island market,
23 the Connecticut market, potentially the Maine and New
24 Hampshire market -- the New Hampshire market for

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1 certain. Potentially Maine market.
2 Q. And what are the relative prices expected to be in
3 each of those markets throughout the term of the
4 20-year PPA?
5 A. (Mr. Large) We have not forecasted what those prices
6 would be.
7 Q. Okay. I'd like you to turn your attention to
8 Article 24 of the PPA, please. Article 24 is titled,
9 "FERC and NHPUC Review; Certain Covenants and
10 Waivers." And 24.2 reads, "It is the intention of
11 the parties that any authority of FERC or the NHPUC
12 to change this agreement shall be strictly limited to
13 that authority which applies when the parties have
14 irrevocably waived their right to seek to have FERC
15 or the NHPUC change any term of this agreement."
16 Does anyone have an understanding of what
17 standard the NHPUC must apply? What was your intent
18 of the standard that would apply at the NHPUC if you
19 had waived your authority to seek a change at the
20 PUC?
21 A. (Mr. Long) I don't know if I can answer that. You
22 know, I'm not a lawyer. But the intent here is that
23 the parties themselves won't seek the change and will
24 waive their rights to do that. It's probably easier

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1 to understand when you look at the FERC in 24.1.3,
2 which refers to Section 205 and 206 filings under the
3 Federal Power Act. That's one where either party
4 could file a change before the FERC. And it's
5 somewhat common for parties to agree not to do that,
6 that they will stand by and support the agreement
7 that they made.
8 Q. And isn't one of the effects of that, that the FERC
9 applies a higher standard of review as to whether the
10 terms of the contract should be changed in a public
11 interest test rather than a reasonableness test?
12 A. (Mr. Long) Again, I guess I would have to defer to
13 lawyers to answer those legal questions.
14 Q. So this provision -- which applies to the third
15 parties; correct?
16 A. (Mr. Long) Well, the contract is signed by two
17 parties.
18 Q. Section 24.1.1, which I believe is misnumbered and
19 should be 24.3.1 -- says, "Absent the agreement of
20 all parties to a proposed change" -- the parties
21 would be PSNH and Laidlaw -- "the standard of review
22 for changes to any section of this agreement
23 specifying the pricing or other material economic
24 terms and conditions agreed to by the parties herein,

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1 whether proposed by a party" -- that would be PSNH or
2 Laidlaw, correct -- "or a non-party" -- which might
3 be the state of New Hampshire; correct?
4 A. (Mr. Long) Again, I'm not at the same point that you
5 are, so I'm trying to find the reference that you're
6 reading from.
7 Q. This is at the bottom of Page 26 --
8 A. (Mr. Long) Okay.
9 Q. -- under 24.3, that first paragraph.
10 A. (Mr. Long) All right. Got it.
11 (Witness reviews document.)
12 Q. And as I read those first four lines, PSNH is
13 intending for this paragraph to apply not just to
14 parties, but to non-parties to the agreement, such as
15 the wood-fired IPPs or the State of New Hampshire,
16 and to the FERC itself. Is that a fair reading?
17 A. (Mr. Long) Again, I guess I would need a lawyer to
18 say that. But this agreement is signed by two
19 parties. So, to the extent that it binds other
20 parties, I guess I would need legal help on that one.
21 Q. Perhaps we can try Mr. Labrecque.
22 Mr. Labrecque, wasn't it the purpose of your
23 testimony to explain the provisions of the PPA?
24 A. (Mr. Labrecque) I'm not going to be any more help

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1 here.

2 Q. Was it PSNH's intent to bind the State of New
3 Hampshire to a higher standard for changing the
4 economic terms of this contract than would otherwise
5 apply than if you entered into this provision?

6 A. (Mr. Long) Again, I guess I need a lawyer to answer
7 that. Because I think under law, a power purchase of
8 this type are under the regulation of the Federal
9 Energy Regulatory Commission. And there are certain
10 delegations that were given to the states. But I
11 would need a lawyer to explain how all that works.

12 Q. Well, can I direct you to IPP Exhibit 22, please. If
13 you look on Page 3, under the Section II,
14 Background --

15 MR. BOLDT: Mr. Chairman, just for
16 the record, before we go too far afield, I'd like to
17 object to relevance of this 2002 document.

18 CHAIRMAN GETZ: Well, I guess I'm
19 concerned, Mr. Shulock, about trying to elicit -- if
20 you're going down the path of trying to elicit legal
21 opinions from the panel. It already sounds like
22 that's not going to be fruitful territory. So what's
23 your intent with this document?

24 MR. SHULOCK: Simply to establish what

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1 PSNH's intent is. Someone on the panel should know
2 what their intent is with regard to this provision,
3 whether it's an intent to bind third parties, my
4 clients, or the State of New Hampshire, to a higher
5 standard than would otherwise apply if this
6 particular provision were not included in the
7 contract. That's an intent question. Maybe they
8 don't know.

9 CHAIRMAN GETZ: Can anyone answer that
10 question?

11 MR. LONG: I can try. But again, as I
12 said before, I'm not a lawyer.

13 A. (Mr. Long) The intent is to preserve the provisions
14 of this contract. I mean, it's an arrangement, a
15 deal negotiated in good faith. So the parties to the
16 deal want this arrangement to be enforced.

17 And so beyond that, we can bind each other in
18 terms of the contract. But I can't go beyond that,
19 as far as saying what the law says.

20 CHAIRMAN GETZ: Mr. Shulock.

21 BY MR. SHULOCK:

22 Q. Mr. Long, I believe you testified that you had not
23 seen the 40 press releases from Laidlaw. But do you
24 remember a press release from September 2008 in which

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1 Laidlaw announced that it had reached an agreement
2 with PSNH on all of the material terms of the 20-year
3 PPA?

4 A. (Mr. Long) Yeah. I don't remember the details, but I
5 remember something along those lines, yes.

6 Q. And I'd like to direct your attention to Exhibit 23,
7 which was a request from Staff, in its third set of
8 data requests. And it's the answer to Question 18.

9 Staff asked for PSNH to provide the date or
10 dates on which the energy, capacity and REC prices in
11 the proposed PPA were finalized. And PSNH didn't
12 object to that question. It responded that all the
13 terms negotiated as part of the PPA are
14 interdependent; thus, no one provision was, in
15 quotes, finalized, until there was agreement on the
16 contract as a whole. The PPA was executed within a
17 matter of days that such final agreement was reached.

18 In September of 2008, did you come to agreement
19 on what the prices in the PPA would be for energy,
20 capacity and RECs?

21 A. (Mr. Long) No. No. We had no binding agreement
22 until the PPA was signed. We had -- we were in
23 negotiations. We were in negotiations on terms
24 within the contract. Either party could have walked

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1 away. But we proceeded in good faith. We had
2 exchanges of information. But we had no agreements
3 until the PPA was signed.

4 Q. In September of 2008, did you not set prices for
5 energy RECs and capacity and other material terms of
6 the contract around which all other terms of the
7 contract would be negotiated in good faith?

8 A. (Mr. Long) We had exchange of offers, but nothing was
9 binding until the PPA was signed. As I testified
10 earlier, in probably the first one or two meetings we
11 talked about concepts. But nothing was binding until
12 the PPA was signed.

13 Q. By September 2008 --

14 MR. BERSAK: Objection. It's
15 argumentative. It's been asked and answered.

16 CHAIRMAN GETZ: Well, I want to hear
17 what the rest of the question is.

18 BY MR. SHULOCK:

19 Q. In September 2008, did you propose to negotiate
20 around price terms in the PPA that are the same price
21 terms that are currently reflected in the PPA?

22 A. (Mr. Long) As I said, we had offer sheets that went
23 back and forth that were non-binding. We could have
24 changed those at any time. And the pricing terms

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1 that we say are only relevant within the total
2 context of other terms of the contract. So nothing
3 was binding.
4 Q. Did those prices appear in your September 18th, 2008
5 term sheet?
6 A. (Mr. Long) Some of them did.
7 Q. Did all of the REC prices, capacity prices and energy
8 prices, appear in that term sheet?
9 A. (Mr. Long) I guess I'd have to go do a comparison.
10 But they could have. But again, until we resolved
11 all the issues and protections, the pricing terms
12 were not binding.
13 Q. But you're not denying that you sent the letter -- or
14 a letter to Laidlaw including the prices that
15 currently appear in the PPA as far back as
16 September 18, 2008?
17 MR. BERSAK: Objection. The witness
18 already answered that.
19 CHAIRMAN GETZ: I think we've already
20 covered it.
21 MR. SHULOCK: Okay.
22 BY MR. SHULOCK:
23 Q. The terms that you exchanged in 2008 -- I'm sorry --
24 September of 2008, did those include the change in

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1 law provisions that we discussed earlier today?
2 A. (Mr. Long) I don't know what you're referring to. If
3 you want to put it in front of me, I'll read it. But
4 I can't remember what we did every step of the way.
5 As I said, this is nearly a four-year process. So
6 you'd have to put a document in front of me and then
7 I can answer that.
8 CHAIRMAN GETZ: Are we up to IPP 24,
9 or where are we?
10 MR. SHULOCK: I'm sorry. That was
11 IPP 23 we talked about.
12 CHAIRMAN GETZ: Well, don't let me
13 interrupt. Let's move along.
14 BY MR. SHULOCK:
15 Q. I'd like you to turn to IPP Exhibit 24, please.
16 A. (Mr. Large) I have it.
17 Q. First, can you read your response?
18 A. (Mr. Large) Yes. "PSNH did not perform any other
19 long-term studies, analyses or comparisons for
20 acquiring Class I RECs over a 20-year period."
21 Q. And by "other," the other two that you had used
22 were -- I'm sorry -- the comparison that you had done
23 was a comparison between the Laidlaw proposal that
24 was made in 2008 and the CPD and Concord Steam

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1 proposals made in 2009; is that correct?
2 (Witness reviews document.)
3 A. (Mr. Large) That's specifically what the question
4 asks for. So, yes.
5 Q. Okay. So, on September 2008, when you were
6 exchanging term sheets, you hadn't conducted -- I'm
7 sorry. You had not performed any long-term studies,
8 analyses or comparisons of how to purchase Class I
9 RECs over the next 20 years, as compared to the
10 offers that were coming in from Laidlaw; is that
11 correct?
12 A. (Mr. Large) We had not done a marketing analysis or
13 competitive solicitation or analysis that would
14 suggest an outcome other than the path that we were
15 on to procure RECs from Laidlaw as we were
16 negotiating.
17 Q. So at that point, you had nothing to compare it to;
18 is that right?
19 A. (Mr. Large) That's not true. We had the alternative
20 compliance price in the state of New Hampshire to
21 compare it to.
22 Q. And that's the only comparison that you made at that
23 time to determine whether the deal that you were
24 getting into was a good deal for your ratepayers for

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1 the 20-year purchase of Class I RECs?
2 A. (Mr. Long) I don't know if I could say it's the only
3 thing. But we've always had a knowledge that the REC
4 requirements radically increase over time. So we
5 viewed it as a growing market that was -- where it's
6 pretty likely that the demand will exceed the supply.
7 So, given that the state had set alternative
8 compliance payments at captive prices, we felt it was
9 a good approach to have highly discounted them --
10 highly discounts to those state-accepted prices as a
11 good benchmark.
12 Q. And you did that without studying or trying to
13 project the cost of RECs over a 20-year period and
14 how prices paid under this contract would compare to
15 prices that you might otherwise pay on the market to
16 obtain New Hampshire Class I RECs; is that right?
17 A. (Mr. Long) That's right. As we said repeatedly,
18 particularly in our rebuttal testimony, nobody knows
19 what the future prices will be. Nobody. And so
20 mistakes of the past were not going to be repeated.
21 We didn't even try to forecast something that is
22 unforecastable. Instead, we took state policy on
23 alternative compliance payments and designed around
24 having a steeping discount to that, a high discount

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1 in the later years. And that was, we felt, the most
2 predictable benchmark to use and was highly
3 consistent with state policy.
4 Beyond that, as I say, nobody knows what the
5 future price is going to be. All indications were
6 that the demand for renewable products was going to
7 increase each and every year, both by law and by
8 interest. And so we thought it would be a good
9 situation to have renewable assets in our portfolio
10 at a time when the demand for renewable was going up.
11 Q. I'd like you to turn your attention to IPP
12 Exhibit 25, please. Do you have that in front of
13 you?
14 A. (Mr. Labrecque) Yes.
15 Q. Now, this is a comparison that you did in -- is it
16 2009 -- of the Laidlaw, CPD and Concord Steam
17 proposals; is that right?
18 A. (Mr. Labrecque) Yeah. I guess I don't know the exact
19 date. It was either late '09 or early 2010.
20 Q. Well, it looks like, if I can refer you to the -- I
21 think it's the first page of Attachment 1 -- you were
22 doing market comparisons based on August 2009
23 information.
24 A. (Mr. Labrecque) That's true.

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1 Q. Okay. And you used that same 2009 information to
2 compare all three facilities; is that right?
3 A. (Mr. Labrecque) We did that comparison, and we also
4 did a comparison of the Laidlaw terms to an August
5 '08 set of current market prices.
6 Q. Okay. And why was that?
7 A. (Mr. Labrecque) That was around the time when some of
8 the pricing terms were being negotiated between PSNH
9 and Laidlaw.
10 Q. That's not because in September of 2008 you had
11 actually agreed to those prices?
12 A. (Mr. Labrecque) I think Mr. Long's already testified
13 to that.
14 Q. I'd like you to turn to Page 4 of 8, and that's
15 handwritten 4 of 8, the page titled "Laidlaw-Berlin
16 August 2008 Proposal Prices."
17 MR. BOLDT: Excuse me, Mr. Chairman.
18 Where is this document?
19 MR. SHULOCK: This is IPP 25.
20 MR. BOLDT: Okay.
21 MR. SHULOCK: And it's Staff Data
22 Request 3. It's from their first -- Staff's first --
23 MR. BOLDT: Got it. I just wasn't
24 sure if it was a different copy.

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1 BY MR. SHULOCK:
2 Q. If you go under -- see the first block there? If you
3 go down to the third line, it says Class I dollar per
4 megawatt hour. And under 1, it has a figure of
5 \$52.48?
6 A. (Mr. Labrecque) I see that.
7 Q. And that is the figure from the Laidlaw proposal;
8 correct?
9 A. (Mr. Labrecque) I believe that's a percentage
10 discount to the ACPs that are also on the
11 spreadsheet.
12 Q. And if you look down under where it says "August 4,
13 2009, Market Price forecast" --
14 A. (Mr. Labrecque) I see that.
15 Q. -- do you see a line for Class I RECs dollars per
16 megawatt hour?
17 A. (Mr. Labrecque) I see that.
18 Q. And under 1 you see a figure of \$37?
19 A. (Mr. Labrecque) Correct.
20 Q. Under Figure 2 -- under No. 2, a figure of \$37.93?
21 A. (Mr. Labrecque) I see that.
22 Q. Okay. Now, this block of numbers is what you used to
23 compare the Laidlaw proposal to some metric for the
24 market; correct?

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1 A. (Mr. Labrecque) Correct.
2 Q. And I'd like you to go and compare the Laidlaw REC
3 prices to the August 4th, 2009 market price forecast
4 and tell me the first time that the market price
5 would exceed the price that you would be paying to
6 Laidlaw.
7 (Witness reviews document.)
8 A. (Mr. Labrecque) Yeah. Keep in mind, the way that the
9 Class I REC price there was developed was a broker
10 quote sheet that was relevant at the time. That
11 probably only had that 2010 or 2011 vintage pricing
12 in it. And the remainder of these prices are some
13 kind of simple escalation. So there was no market
14 forecast for Class I RECs. There isn't one in
15 today's either.
16 But on this spreadsheet, the only number of any
17 significance might have been a broker sheet for a
18 2010 or '11 REC that was trading at close to \$37. So
19 all the other 20 numbers on this sheet of that number
20 with some kind of crude CPI escalator applied to it.
21 So that's not a forecast of the market, nor is it the
22 market.
23 Q. Would you agree that it's a projection based on
24 near-term market prices and an escalation factor?

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1 A. (Mr. Labrecque) It's not a projection. It's an
2 illustrative snapshot scenario that was used to
3 benchmark three different proposals against that
4 snapshot.
5 Q. So, under your snapshot, what is the first year under
6 which -- or in which the price that you've
7 established for Class I RECs in dollars per megawatt
8 hour exceeds the price that you would be paying
9 Laidlaw under the Laidlaw proposal? Is that year 16?
10 A. (Mr. Labrecque) In year 16, yeah, the number in the
11 row that starts with 37 is higher than the number in
12 the row that starts with 52.48.
13 Q. Year 16.
14 (Witness reviews document.)
15 A. (Mr. Labrecque) Correct.
16 Q. And can you read the calendar year under year 16?
17 A. (Mr. Labrecque) 2027.
18 Q. Thank you.
19 MR. SHULOCK: That completes our
20 cross.
21 CHAIRMAN GETZ: Okay. Thank you.
22 (Chairman and Commissioners conferring.)
23 CHAIRMAN GETZ: Okay. Well, I think
24 this is a good day -- time to break for the day.

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1 Let's see if there's any other issues we need to
2 address before we recess for the day, and
3 understanding that you'll be meeting amongst
4 yourselves tomorrow morning at 8:30.
5 But Ms. Hatfield.
6 MS. HATFIELD: Mr. Chairman, I have
7 already distributed my exhibits to everyone else. I
8 thought I could give them to you now, if that would
9 be helpful.
10 CHAIRMAN GETZ: Please.
11 MR. BERSAK: I do have a question.
12 I'm going to go through, as I stated I will, the
13 rebuttal testimony to try and strike out the
14 references that are no longer relevant, given the
15 withdrawal of Concord Steam.
16 What I'd like to know is, how many
17 copies people here in the room would like so that I
18 make sure that everybody has a copy of the current --
19 the most current version of rebuttal, because it
20 looks like we've got 40 or more people inside here.
21 If that's what it takes, I'll make that many copies.
22 Who needs how many copies?
23 CHAIRMAN GETZ: Off the record.
24 (Discussion off the record.)

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1 CHAIRMAN GETZ: Back on the record.
2 Let me just make sure we clarify this. So you're
3 going to make corrected copies. I guess it's --
4 MR. BERSAK: I will substitute what's
5 been marked as PSNH Exhibit, I believe it's 6 -- 7,
6 the rebuttal testimony of Mr. Long, Mr. Large and
7 Mr. Labrecque. I will go through, and I will strike
8 the information in there that no longer is relevant
9 in light of Concord Steam's withdrawal. I will
10 provide copies of that to everybody in the room, the
11 Commission, the clerk, the reporter.
12 CHAIRMAN GETZ: I guess what the issue
13 is, if it's a matter of just a couple of pages, you
14 can just substitute pages.
15 MR. BERSAK: No, it goes throughout
16 the testimony. I've already done it. I just have to
17 physically do it back in the office and make the
18 copies.
19 CHAIRMAN GETZ: Ms. Hatfield.
20 MS. HATFIELD: I would request a
21 red-line version, if that's at all possible, because
22 there may be some disagreement over what --
23 MR. BERSAK: I shall do that. I will
24 strike through the part that's stricken. Strike?

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1 Struck?
2 MS. HATFIELD: Thank you.
3 CHAIRMAN GETZ: Okay. Anything else
4 before we recess for the day?
5 (No verbal response)
6 CHAIRMAN GETZ: Hearing nothing, then
7 thank you, everyone. We'll see you tomorrow morning.
8 (WHEREUPON, Day 1 was adjourned at
9 4:38 p.m.)
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**DAY 1 - AFTERNOON SESSION ONLY - January 24, 2011
DE 10-195 PSNH/LAIDLAW BERLIN BIOPOWER**

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