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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

January 25, 2011 - 12:09 p.m.
Concord, New Hampshire

DAY 2
PUBLIC HEARING
{REDACTED FOR PUBLIC USE}

RE: DE 10-195 NHPUC FEB11'11 AM11:44
PUBLIC SERVICE CO. OF NEW HAMPSHIRE:
Petition for Approval of Power Purchase
Agreement between PSNH and Laidlaw Berlin
Biopower, LLC.

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

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of N.H.:
Robert A. Bersak, Esq.

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

Reptg. Bridgewater Power, Pinetree Power,
Pinetree Power-Tamworth, DG Whitefield
Power, Springfield Power, and Indeck
Energy-Alexandria:
David J. Shulock, Esq. (Brown, Olson...)
David K. Wiesner, Esq. (Brown, Olson...)

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

Reptg. Edrest Properties, LLC:
Jonathan Edwards

COURT REPORTER: Susan J. Robidas, LCR NO. 44

ORIGINAL

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
Office of Consumer Advocate

5 Reptg. Staff:
6 Suzanne G. Amidon, Esq.
7 Edward N. Damon, Esq.
8 Thomas C. Frantz, Director/Electric Div.
9 George R. McCluskey, Electric Division

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* * * * *

WITNESS PANEL: Gary Long
Richard C. Labrecque
Terrance Large
Lisa Shapiro

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(Reserved) What authority does the seller have to cause other parties to comply with the right of first refusal?

PSNH 12 Record Request by PSNH: 116
(Reserved) Whether the Commission approval of the PPA and this section in particular would preclude the Commission from exercising any statutory authority to modify any orders related to this PPA

PSNH 13 Record Request by PSNH: 122
(Reserved) Is it PSNH's position that it needs or does not need approval from this Commission?

P R O C E E D I N G S

1
2 MR. CHAIRMAN: Okay. Good afternoon.
3 Reopening the hearing in Docket DE 10-195. I think I
4 have all my papers straight. I understand there's
5 been some discussions this morning with respect to
6 our request that the parties undertake some review
7 through a technical session of discovery materials.

8 And Mr. Boldt, you have something?

9 MR. BOLDT: Yes, Mr. Chairman.
10 Pursuant to the court's instructions and the order
11 granting our motion for confidential treatment
12 yesterday, we have brought in earlier this morning,
13 at the 8:30 time, 20 copies of both Ventyx and
14 Northern Energy reports. Three of those copies went
15 up to you. We understand that -- and we have offered
16 a receipt that basically tracks the PUC rules. These
17 materials will be kept confidential by the parties.
18 They'll be used in this case. They will not be
19 disseminated beyond the parties; and that it is one
20 where, when this matter is over and the appeals are
21 done, the copies come back to us. In that way, we
22 believe we are protecting the confidentiality --
23 honoring the confidentiality order and protecting the
24 copyright issues that are of vital importance to the

1 City's witness. We're not here to make things
2 difficult. We are trying to very hard work through
3 this issue that was first raised in our motion on
4 January 11th. There is --

5 MR. CHAIRMAN: Well, let me address
6 the status of confidentiality while we're on this
7 topic.

8 So, because this morning we were
9 finally given a copy of the Ventyx and the Energy
10 Solutions documents, I think --

11 MR. BOLDT: Yes, those are those
12 three.

13 MR. CHAIRMAN: As I indicated
14 yesterday, we had not previously had the opportunity
15 for in camera review, but it sounded like the
16 material was of a nature that might be susceptible to
17 a protective treatment. And I also pointed out that
18 under -- by operation of our rules, the filing of
19 such material, had it been filed on January 11th, the
20 date of the motion for confidentiality, would have
21 been treated in confidence. And so, having said that
22 now, and having had the opportunity for in camera
23 review, we're prepared to confirm that they shall be
24 treated in confidence. I also noted yesterday that

1 they should be distributed to all of the parties and
2 that all the parties would be subject to the
3 constraints of a protective order.

4 MR. BOLDT: The one concern in this
5 mix, Mr. Chairman, is the treatment of the IPPs. The
6 IPPs are private citizens -- frankly, a group of
7 private citizens -- that are also tax-evaluated by
8 Mr. Sansoucy's company in the various municipalities
9 that they reside -- where their plants are in
10 residence, rather.

11 Mr. Shulock and I have had several
12 conversations. He's not willing or able to sign off
13 on the receipt that says don't make copies and
14 disseminate them. So we are concerned and do not
15 feel that we can provide copies to IPP. We have no
16 problem tendering copies to Staff. The Staff -- the
17 attorney for OCA is fine with the receipt. She and I
18 worked on the language, and she is fine with that.
19 So we are fine in providing them to her.

20 MR. CHAIRMAN: Could you tell me
21 what this -- I'm not following this whole notion of
22 these entities or tax-evaluated clients.

23 MR. BOLDT: For example:
24 Alexandria -- one of Mr. Shulock's plant clients is

1 located in Alexandria. There are six that are
2 scattered throughout the state. Mr. Sansoucy's
3 company evaluates them for those municipalities for
4 tax purposes. And it is of import that material not
5 be disseminated out beyond the purposes of this
6 case -- "this case" being this PUC docket. We don't
7 want this material sent out into the world, so to
8 speak, because that will violate the copyright. And
9 if there's a violation of copyright -- remember, we
10 gave the strong language as an exhibit to our motion
11 to compel.

12 MR. CHAIRMAN: Well, I understand --

13 MR. BOLDT: If those materials were
14 yanked from Mr. Sansoucy, then his business abilities
15 will be severely impaired. So we're trying to strike
16 a balance of issues. Give the materials to the
17 parties, but acknowledge --

18 MR. CHAIRMAN: I'm just trying to
19 follow. I understand the copyright argument. But I
20 thought you were going down the path of some kind of
21 competitive information argument, that somehow, if
22 Mr. Shulock's clients have them, have the material,
23 there's some harm that might happen other than the
24 copy -- violation of the copyright.

1 MR. BOLDT: Primarily the copyright
2 material --

3 MS. HATFIELD: Can I -- I'm sorry to
4 interrupt. But just to go back to the City's motion
5 for confidential treatment covers three things: The
6 Ventyx study, the Energy Solutions outlook
7 information, and then the Sansoucy company files.
8 And I'm wondering if Attorney Boldt, when he's
9 referring to this business impact, if he's perhaps
10 referring to the Sansoucy company files.

11 MR. CHAIRMAN: Yeah, and we haven't
12 addressed the files yet or made any ruling on the
13 files.

14 MR. BOLDT: And at this point in
15 time, my discussion is on the Ventyx and the
16 Northern. So we are concerned with copies --
17 primarily the Ventyx. The Northern is not nearly as
18 harsh. And we said to Mr. Shulock we can provide the
19 Northern. That is the smaller of the two which
20 you've been provided. You have obtained copies this
21 morning. But Ventyx has a very --

22 MR. CHAIRMAN: Northern, meaning the
23 Energy Solutions?

24 MR. BOLDT: Yes. Excuse me.

1 So it's the Ventyx materials that we
2 are most concerned with. In light of the fact that
3 both Staff and OCA are subject to the confidentiality
4 and have no issues with the return of the copies,
5 meaningful cross can be occurring for this
6 Commission. We think that, in the balance of
7 interests, that this is a solution that all can then
8 address.

9 Also, we have -- we will make Mr.
10 Sansoucy available for another technical session
11 where questions can be asked of him concerning these
12 newly available materials, either this afternoon,
13 tomorrow, the 1st, something along those lines, so
14 that as much as possible we are meeting in the
15 middle, to the degree we can.

16 And so we ask this body's
17 consideration of our concerns and hope that it will
18 recognize that this is a reasonable solution to the
19 situation.

20 MR. CHAIRMAN: Let me understand
21 exactly what arrangement you want to have with Mr.
22 Shulock. And I need to hear Mr. Shulock's response.

23 MR. BOLDT: Certainly. Late last
24 night, with then some verbiage changes with Ms.

1 Hatfield this morning -- in essence, it acknowledges
2 this body's grant of our motion for confidential
3 treatment, in that the party -- and the signature
4 line for them -- the attorneys agree to keep such
5 information confidential at all times, not distribute
6 copies of the materials to parties not authorized to
7 receive, to use the materials only in the
8 above-referenced matter -- meaning this case, this
9 docket -- and at the conclusion of the hearing in the
10 above docket, and any related appeals, to immediately
11 return all copies to me. That's what we're asking to
12 be the terms.

13 MR. CHAIRMAN: But you would give him
14 one copy?

15 MR. BOLDT: We would give him a copy.
16 He's fine to meet with his client or clients to go
17 over how to do they review -- how do they want to
18 deal with the materials. I understand that some of
19 his principals are not in state, they are out. And I
20 understand that that's a logistical issue. However,
21 in the interest of balancing competing needs, we feel
22 that is a reasonable solution. We also have agreed
23 to give multiple copies to Staff, multiple copies to
24 OCA, so that meaningful cross-examination can be had

1 as expeditiously as possible in that matter.

2 MR. CHAIRMAN: Okay. Thank you. I
3 want to hear from Mr. -- well, is there anything else
4 before I hear from Mr. Shulock?

5 (No verbal response)

6 MR. CHAIRMAN: Mr. Shulock.

7 MR. SHULOCK: My original objection to
8 the use of these materials stands. I believe that
9 the parties haven't had adequate time to review them,
10 even if they are provided. Under this agreement that
11 Mr. Boldt has offered, there are some logistical
12 problems. He has agreed to provide me with one copy
13 of the Ventyx materials, which I may not further
14 copy, although I can show it to my clients, all
15 right. So I would have to -- that means I can't fax
16 it, I can't e-mail it, I can't duplicate it in any
17 way. I would either have to sit on the phone and
18 describe it with clients or have them come to Concord
19 to review the materials and to work with it. That's
20 an extremely cumbersome process. My clients did join
21 together to try to make the process a little easier
22 for everyone, so that six people had one attorney
23 representing them. But you have to understand that
24 for the attorney, that creates incredible logistical

1 problems for doing things on the fly and quickly.
2 It's very hard to find the time when I can get all of
3 those clients together --

4 MR. CHAIRMAN: Well, let me ask a
5 practical question. And I guess it goes to how you
6 prepared your cross-examination, discovery in this
7 case, and how an attorney deals with multiple
8 clients. I mean, do you need all of your clients to
9 review this to help you conduct discovery? Would you
10 typically have one or some subset to help you? Or do
11 you do your discovery on your own? I mean, I'm just
12 trying to figure out is there a practical solution to
13 this problem, short of sending copies to everybody
14 who may not do anything with them?

15 MR. SHULOCK: With this information, I
16 believe I would have to work with probably at least
17 half of the clients, unless the other clients were
18 willing to let me work with just one. That I would
19 have to work out outside of the room. And I can't,
20 sitting here, say how that would work.

21 MR. CHAIRMAN: Okay.

22 MR. BOLDT: There's six separate
23 clients. They all have their own interests and
24 desire to provide input.

1 MR. CHAIRMAN: I understand. So did
2 you have anything else, then, on this?

3 MR. SHULOCK: On the Ventyx, no.

4 MR. CHAIRMAN: All right. Ms.
5 Hatfield, did you have something more on this?

6 MS. HATFIELD: Well, I'm afraid it's
7 repetitive, but I'd like to say it again if I could.
8 It is Day 2 of the hearing, and it's 12:20, by my
9 watch, and the OCA still has not received information
10 that Berlin should have filed on January 11th. And
11 I'm afraid, because we know time is of the essence in
12 this case -- we've heard it from Laidlaw before they
13 withdrew, and it's been mentioned several times, that
14 this delay is really not going to be useful, and it
15 may not lead to information that's useful for the
16 Commission making its decision. So I would suggest
17 that the Commission reconsider whether it's holding
18 Paragraph 12, Section E of the OCA's motion in
19 abeyance at this time and, instead, just strike the
20 information from Mr. Sansoucy's testimony that
21 references this material, because this really is just
22 getting to the point of just being ridiculous.

23 And I actually did have a few other
24 things that I needed to address in my motion that

1 have been brought to my attention when it's the
2 appropriate time.

3 MR. BOLDT: If I may respond, Mr.
4 Chairman. To say that we are creating this problem
5 is not fair. We filed our motion. And pursuant to
6 the Rule 203.08(b) -- excuse me, (b)(1) -- we are
7 authorized to give citation to the materials. This
8 is copyrighted material that we were very concerned
9 with, as a municipality, were we going to be stepping
10 into a copyright fight. That is from our expert. We
11 provided this information on the 11th. And
12 unfortunately, there was no request for --

13 MR. CHAIRMAN: Provided what
14 information?

15 MR. BOLDT: The summary information
16 that's attached to our motion for confidential
17 treatment.

18 MR. CHAIRMAN: Okay. But not the
19 documents.

20 MR. BOLDT: But not the documents,
21 pursuant to this provision of the rules. And there
22 was no request for it, no motion to compel until the
23 motion to strike is filed, and after 5:00 on Sunday
24 evening. We're responding as quickly as possible,

1 and we are willing to give the materials now. We're
2 willing to have our expert appear for a technical
3 session on it at the convenience of the parties
4 immediately. And I must say that IPP has not filed
5 testimony in this case and no expert. Had they had
6 an expert, that expert could sit with Mr. Shulock in
7 this room and go over this material within 20
8 minutes.

9 So we ask, respectfully, that this
10 claim of we are slowing this process down -- we're
11 trying to protect the City's rights. This is of
12 prime importance to the City of Berlin, that the
13 proper information come before this board. We're not
14 trying to slow this down. We're trying to speed it
15 up as quickly as possible. And I will -- do have a
16 request to reconsider the motion to strike. And at
17 the proper time, I'm fine to take five minutes to go
18 through Mr. McCluskey's testimony and Mr. Frantz's
19 testimony and show why Mr. Sansoucy's testimony
20 should be considered rebuttal.

21 MR. CHAIRMAN: Yeah, I appreciate, Mr.
22 Boldt, that your motives are good here, and certainly
23 that you are in favor of expediting the process and
24 providing the information in a reasonable way. But

1 there have been some issues that we never got the
2 information, and it could have been provided to us
3 under our -- under another subsection of our rules
4 that would have protected it. And also, it's a fact
5 that there was no objection by the -- to the data
6 request, but at the same time, a point that was made
7 clear yesterday, there was no request for the
8 information as well. So I think there's a number of
9 issues that go to the treatment of this and not just
10 the one that you pointed out.

11 Well, let me address -- I'm trying to look, Ms.
12 Hatfield, again at your motion here, because I want
13 to make sure we don't overlook the Sansoucy files in
14 this conversation.

15 MS. HATFIELD: And actually, Mr.
16 Chairman, those are -- I don't believe they're
17 directly raised by my motion. But if you look at the
18 City's January 11th motion for confidential
19 treatment, attached to that are the IPP data
20 requests. And it's Data Request 1-3 on page -- I
21 believe it's Page 8 of 10. That's where there's a
22 reference to company files retained by Mr. Sansoucy.
23 So that's really where that's raised. I'll let
24 Attorney Shulock speak to that if you have questions

1 about it.

2 MR. BOLDT: Just for the record, it's
3 my understanding that those files are the tax files
4 of Mr. San -- Mr. Shulock's clients, so that they
5 have the same materials already.

6 MR. CHAIRMAN: Is there anything in
7 his testimony that refers to him relying on his files
8 as a basis for his ultimate opinion as to the
9 reasonableness of the contract?

10 MR. BOLDT: Not directly. I don't
11 believe so, Mr. Chairman. There are references to
12 exhibits that were prepared and attached to the
13 rebuttal testimony that we will argue the propriety
14 of those coming back in when we argue about that
15 motion.

16 MR. SHULOCK: If I may?

17 MR. CHAIRMAN: Mr. Shulock.

18 MR. SHULOCK: I understood Mr. Boldt's
19 argument yesterday. The testimony did rely on those
20 confidential information -- on that confidential
21 information. And secondly, this is the first time
22 that I heard today -- well, I heard it a few minutes
23 before your returning to the room -- that this
24 information was somehow propriety to my clients or

1 that they had seen it. And I don't know whether
2 that's true or not. I don't know what the
3 information is that he relied on. I did manage to
4 contact one client. There was no request to release
5 that confidentiality before this proceeding. And I
6 also asked the client whether Mr. Sansoucy or anyone
7 from his office had ever shared with them Ventyx or
8 other confidential information and -- I'm sorry -- I
9 asked just specifically about the Ventyx information,
10 and no one had shared that information with them.

11 MR. CHAIRMAN: Okay. Let me just try
12 and clarify at least my understanding of this, as I
13 was, in my memory, trying to make clear what was in
14 the data responses and what was in the rebuttal
15 testimony. And clearly in the rebuttal testimony
16 there's a reliance on Ventyx and Energy Solutions,
17 but it does appear that it's only in the data
18 response pointed out by Ms. Hatfield. There's a
19 reference to a number of things, including Mr.
20 Sansoucy's files, which then there appears to be an
21 assertion that those files are confidential. And
22 they may well be. But at this point, you know, it's
23 not part of the testimony and not part of the -- it's
24 not being sought to be moved into the record.

1 MR. SHULOCK: If I may? Mr. Sansoucy
2 had direct testimony regarding gas prices and the
3 effect that that might have on the energy market in
4 the future. This Data Request 13 went to that,
5 regarding his opinions and what he based those
6 opinions on. And he based those not just on the
7 studies, but also on the confidential documents,
8 including company files retained by Mr. Sansoucy from
9 other third-party power generation gas pipeline
10 companies. And we just don't know what those are. I
11 mean, his rebuttal testimony -- which isn't really
12 rebuttal testimony, it's an expansion of his covering
13 holes in his direct testimony -- is all based on
14 this, even if he hasn't mentioned that specifically
15 in the rebuttal testimony. This data request makes
16 that clear, I think.

17 MR. CHAIRMAN: Okay. Thank you.

18 (Chairman and Commissioners conferring.)

19 MR. CHAIRMAN: Let me start with this
20 issue, Mr. Boldt. One thing, I think there needs to
21 be some accommodation to the wood IPPs. And I'm
22 concerned that one copy doesn't get there. I'm not
23 convinced that they need six copies.

24 And Mr. Shulock, it just seems to me

1 there's got to be some way to reach an accommodation
2 between the two parties, so that you can have the
3 assistance of your clients, your client's interests
4 are represented, and there's some way of preparing
5 discovery and to review these documents. Do I need
6 to rule and pick a number, or can the two of you
7 figure this out?

8 MR. BOLDT: Well, I guess my question
9 back for clarification, Mr. Chairman, is that Mr.
10 Shulock's parties are bound by the same terms of this
11 receipt --

12 MR. CHAIRMAN: Yes. And we will --

13 MR. BOLDT: -- so that if they get a
14 copy -- and let's pick a number. Is it two? Is it
15 three? You know --

16 MR. SANSOUCY: He has to disclose who
17 it's going to --

18 MR. BOLDT: He has to disclose who
19 it's going to before it goes, and they have to give
20 it back --

21 MR. SANSOUCY: Right.

22 MR. BOLDT: -- and only use it for
23 this proceeding. It's not available for other
24 proceedings before this body, any court, BTLA,

1 nothing.

2 MR. CHAIRMAN: That would be
3 absolutely the intent and the understanding.

4 MR. BOLDT: With that --

5 MR. SHULOCK: Although, I can't at
6 this point say who those people are, because I would
7 have to contact the clients to find out who in the
8 organizations are the proper people to review that
9 material.

10 MR. SANSOUCY: His clients probably
11 have it.

12 MR. BOLDT: We understand that four
13 of his clients may already have this material in the
14 most recent tax --

15 MR. SANSOUCY: It's a red herring.

16 MR. BOLDT: It may well be a red
17 herring issue. I'm fine to give four copies over
18 when he -- but before he disseminates, he has to tell
19 me --

20 MR. SANSOUCY: Time out, time out.
21 There's other --

22 MR. CHAIRMAN: Excuse me, Mr. Boldt.
23 Control your witness, please.

24 MR. BOLDT: My apologize. This is,

1 obviously, a very sensitive subject because it goes
2 to the bedrock issue of his ability to do his
3 business. May I take a brief moment to discuss it
4 with my expert?

5 MR. BERSAK: Mr. Chairman, perhaps as
6 another accommodation, yesterday you mentioned that
7 the Commission had a hearing date open next Tuesday.
8 It's quite apparent we will be back here on Tuesday
9 to utilize that date, because we're not making much
10 in the way of progress today.

11 MR. CHAIRMAN: What I would very much
12 like to do is move along those lines, because I think
13 it's entirely unfortunate that we have the witnesses
14 that are sitting here all day. I would like to try
15 and get back to the panel this afternoon. And I'm
16 presuming it would be tomorrow that we'd try to
17 complete that. But we're not going to go on to other
18 witnesses. We need to get to the Berlin witness. If
19 there's a way to conduct all of this and discovery
20 and -- so that we would have a hearing on
21 February 1st to deal with the Berlin testimony, that
22 would be my preference.

23 MR. BOLDT: Mr. Chairman, I may be
24 able to give this solution: If we give -- before we

1 give copies to Mr. Shulock, he tells us which two of
2 his clients will get it, and they are bound by this
3 same information -- this same agreement. If he gives
4 it to me this afternoon after the break, I'll give
5 him the copies. In the meantime, I'll immediately
6 give copies to OCA and Staff, because they're
7 amenable to these terms. Is that a rational and
8 reasonable solution so that we can proceed?

9 MR. CHAIRMAN: Well, certainly you
10 ought to get it to Staff and the OCA. I'm surprised
11 that hasn't already happened. But I would just
12 ask -- what I think we're going to need to do, as
13 folks have been here for some time, is have a lunch
14 recess and then pick up with the cross-examination.
15 And hopefully, you and Mr. Shulock can work out the
16 details during the lunch recess.

17 MR. BOLDT: Fair enough.

18 MR. CHAIRMAN: I still am a little
19 concerned with how we're going to deal with the
20 files. They've been implicated. And I guess let me
21 state, you know, I guess a concern about whether they
22 should be open and reviewable and whether there'd be
23 a -- I don't know how you're going to deal with this
24 issue. I don't know exactly what those things are.

1 But at a minimum, we may be looking at the issue of
2 that. If they're not made available for discovery,
3 then I think they can't be given any weight in the
4 formation of --

5 MR. BOLDT: We agree that --

6 MR. CHAIRMAN: -- the witness's
7 opinions.

8 MR. BOLDT: My apologies.

9 We agree that the weight issue is with
10 this body, so that on cross-examination, if there is
11 a "you didn't provide X," "you didn't provide Y,"
12 that comes in and that goes to attack Mr. Sansoucy's
13 weight and credibility. I think it's more important
14 that this body hear the -- consider his opinions, and
15 then -- before attacking the weight, obviously. But
16 I again urge that this is a red herring and that no
17 request, no motion to compel was ever filed by IPPs.
18 We ask that we be able to proceed on. And I agree;
19 let's get to back to PSNH. At the appropriate time,
20 we would like five minutes for the body to consider
21 the motion to strike as a motion to reconsider. And
22 we can do that at any point in the proceeding as a
23 bookend issue.

24 MR. CHAIRMAN: All right. Thank you.

1 Mr. Bersak, did you have more that you
2 were --

3 MR. BERSAK: No, I was just going to
4 suggest that we continue on with proceeding with the
5 witnesses; that Mr. Sansoucy testify for everything
6 but for this one Ventyx item; that he be made
7 available by Berlin next Tuesday, to the extent that
8 anybody has questions. That gives Mr. Shulock an
9 opportunity to deal with his disparate clients and we
10 can just move this process along. I don't think that
11 that particular Exhibit 1 or that one piece of
12 information is going to be what this case revolves
13 around. And so, if we can just move beyond it and
14 just come back to it later on, maybe that gives
15 everybody what they need to accomplish their
16 representation of their various clients.

17 MR. CHAIRMAN: And let me confirm
18 where we are in terms of Mr. Shulock, and I think
19 maybe, Ms. Hatfield, in terms of objection to this
20 process. Is there still a general objection to,
21 well, what is now a specific proposal for discovery,
22 that it be conducted between now and next Tuesday,
23 with a hearing scheduled on Mr. Sansoucy's testimony
24 for next Tuesday?

1 MR. SHULOCK: So...

2 MR. CHAIRMAN: So what's your
3 position? Do you have an objection to that process?

4 MR. SHULOCK: I'm trying to -- first,
5 I need to delineate what exactly it is we're getting.
6 I understand we're getting the Ventyx studies, the
7 Energy Outlook subscriptions?

8 MR. CHAIRMAN: Yes. And then
9 hopefully over lunch you figure out what the magic
10 number is that you need.

11 MR. SHULOCK: Okay. And once I have
12 that magic number, I can give them copies. Now, the
13 question becomes do I have to give them the numbered
14 piece of paper that they give me, or may I scan that
15 in a PDF and send it to them?

16 MR. CHAIRMAN: Well, can't we work
17 that out over lunch?

18 MR. BOLDT: You and I will be able to
19 work out the particulars. From the standpoint of we
20 want control over the copy --

21 MR. SHULOCK: Whether the timing works
22 depends how that happens. Because if I have to do
23 this through the mail, all right, or call people into
24 Concord, or go travel somewhere to do it, it may not

1 be sufficient time.

2 MR. CHAIRMAN: So, presuming you have
3 all the technological options that you would like
4 available to you --

5 MR. SHULOCK: That works.

6 MR. CHAIRMAN: Okay.

7 MR. SHULOCK: It's only when he says
8 you can't copy it, you can't distribute it, you
9 can't -- you can show your clients a copy, but you
10 immediately have to pull it back from them, you have
11 to give us the copy back that we gave to you, and
12 there can be no other reproduction of that, that it
13 becomes problematic. If I can distribute it and
14 speak with my people about it, it's not a problem to
15 do it on Tuesday.

16 MR. CHAIRMAN: Hold just one second.

17 (Chairman and Commissioners conferring.)

18 MR. CHAIRMAN: Okay. There will be --
19 well, actually, Ms. Hatfield, I didn't give you an
20 opportunity before I --

21 MS. HATFIELD: Thank you.

22 MR. CHAIRMAN: -- make a decision.

23 MS. HATFIELD: We do object. And I
24 just want to be clear that it's possible that, with

1 everything else Mr. Traum needs to do in the next few
2 days related just to this case, he may not have
3 enough time to review it, engage in discovery. And
4 so I just wanted to be upfront about that. But at
5 the end of the day, that might be what we say. We
6 appreciate the accommodations, but it just wasn't
7 sufficient.

8 And also, if I can, Mr. Chairman, I did want to
9 comment on the breadth of the IPP Question 1-3. And
10 I don't know if it's asking for all of Mr. Sansoucy's
11 files, but it does seem to be quite broad. And I
12 think any witness is going to bring with them years
13 of experience. And he specifically talks in his
14 response about valuating plants and that sort of
15 thing. And it does seem to be, you know, burdensome
16 to say, you know, show me your firm's files. And I'm
17 not sure if that's what Mr. Shulock was referring to.
18 But it certainly does seem like it's something that
19 would be very difficult to address.

20 MR. CHAIRMAN: Yes, thank you.

21 Ms. Amidon.

22 MS. AMIDON: I just have one
23 procedural, just to let the Commission know how the
24 parties decided to deal with PSNH Exhibit 9.

1 MR. CHAIRMAN: Okay. Let's hold that
2 off for one second.

3 MS. AMIDON: Thank you.

4 MR. CHAIRMAN: Okay. This is what
5 we're going to do: We'll go through, complete the
6 cross-examination of PSNH. And I think this may end
7 up with what you're going to say about Exhibit 9, I'm
8 presuming. But we will -- once we get the PSNH
9 testimony and cross-examination completed, the
10 intention is to have the opportunity for discovery on
11 these materials from the City of Berlin, and we'll
12 have the hearing on the cross-examination of Mr.
13 Sansoucy next Tuesday.

14 MS. HATFIELD: Mr. Chairman, I'm
15 sorry. I didn't speak to that specifically. But I
16 do want to be crystal clear that we do object to Mr.
17 Sansoucy going after our witness. But I understand
18 if that's how you --

19 MR. CHAIRMAN: No, that's not going to
20 be the case.

21 MS. HATFIELD: Okay.

22 MR. CHAIRMAN: And what necessarily
23 then flows from that is I'm not seeing that we're
24 going to get through PSNH. You know, maybe tomorrow.

1 I'm hopeful. Then the next day that would be
2 available would be next Tuesday for Mr. Sansoucy.
3 Then we get to Mr. Traum and Mr. McCluskey and Mr.
4 Frantz. So, you know, this is a very time-consuming
5 process, and we're just going to go through it step
6 by step to make sure everyone's due process rights
7 are accommodated.

8 MS. HATFIELD: Thank you for
9 clarifying that.

10 MR. CHAIRMAN: I think it would be
11 unfair to take Mr. Sansoucy out of order, what would
12 be the fair order in this process, because of issues
13 that have arisen with respect to the motions for
14 confidentiality, failures to object and lack of
15 motions to compel. So I think there's a number of
16 reasons for the situation that we find ourselves in.

17 Okay. Anything else on that issue
18 before we turn to -- oh, Commissioner Ignatius.

19 CMSR. IGNATIUS: Thank you. One
20 follow-up that was discussed yesterday, Mr. Boldt.
21 You had agreed to put on the record the steps that
22 you or your client had taken to seek release of the
23 information. Are you prepared to do that?

24 MR. BOLDT: It's my understanding

1 that Mr. Sansoucy's office made telephone calls to
2 the people and that their process is they do not
3 release. So, in light of the --

4 CMSR. IGNATIUS: Well, that's where we
5 were yesterday. I was hoping for a little better
6 answer than your understanding of some phone calls.
7 Can you describe when they were made?

8 MR. BOLDT: It's my understanding
9 last week. But they also have made those calls in
10 the past. From a standpoint of addressing the
11 production in this way, I did not -- I did not ask
12 for more specific details. My apologies.

13 CMSR. IGNATIUS: Thank you.

14 MR. CHAIRMAN: Mr. Shulock.

15 MR. SHULOCK: If I may, they made a
16 claim that much of this information from their
17 confidential files relates to the wood plants and
18 their valuations. And I'm not sure of all of the
19 wood plants. I know that some of the wood plants
20 have entered into confidentiality agreements with Mr.
21 Sansoucy's firm for items that they have provided to
22 Mr. Sansoucy. For those clients that I do represent,
23 I don't understand them having received a telephone
24 call asking if that permission would be granted.

1 MR. BOLDT: I was not --

2 MR. CHAIRMAN: I understood permission
3 was with reference to these copyrighted materials.

4 MR. BOLDT: Correct.

5 MR. CHAIRMAN: I don't -- okay.

6 MR. SHULOCK: Okay. Thank you.

7 MR. CHAIRMAN: And I believe Mr. Boldt
8 is confirming.

9 MR. BOLDT: That's correct, your
10 Honor.

11 MR. CHAIRMAN: Okay. Are we ready for
12 Exhibit 9, or did you have something else, Ms.
13 Hatfield?

14 MS. HATFIELD: Well, did you want to
15 do that first before we discuss a few things I need
16 to raise in my motion from yesterday?

17 MR. CHAIRMAN: Which motion? To
18 strike?

19 MS. HATFIELD: Yes.

20 MR. CHAIRMAN: Let me see where we are
21 in Exhibit 9 first.

22 MS. AMIDON: Thank you, Mr. Chairman.
23 The parties were able to meet with the Company this
24 morning to do some of the discovery on Exhibit 9.

1 But given the fact that everybody has prepared their
2 cross-examination based on the filing with the
3 Commission that the Company made in July, we propose
4 that everybody conclude their cross-examination on
5 the filing, and then PSNH has agreed to provide its
6 panel for the same type of cross-examination with
7 respect to Exhibit 9. So we'll be going around the
8 room one more time, but it will allow the Commission
9 to see what was filed and to hear the
10 cross-examination on the filing. And given the fact
11 that Exhibit 9 is not an amendment to the filing, but
12 is an exhibit, we can talk about that separately. I
13 hope that is satisfactory.

14 MR. CHAIRMAN: And there is agreement
15 on this process?

16 MR. BERSAK: Yes, Mr. Chairman.

17 And so you're aware, as a result of
18 this morning's tech session, which was very helpful,
19 we are going to come up with a revision to that
20 document to clarify some of the issues that we
21 discussed this morning. And I will provide that to
22 everybody as soon as we have lunch.

23 MR. CHAIRMAN: Thank you. Back to
24 you, Ms. Hatfield.

1 MS. HATFIELD: Okay. Thank you. If
2 you have a copy of our motion in front of you, a
3 few -- or one typographical error has been raised by
4 Attorney Roman, and that is on Page 5, in
5 Paragraph 12, Subsection C. The reference states
6 Page 12, Line 7 through Page 17, Line 48. And the 48
7 is a typographical error. It should read Line 2.

8 CMSR. BELOW: Two or 20? Just my own
9 note was 20, because I had looked at it. But...

10 MS. HATFIELD: Thank you, Commissioner
11 Below. I believe my intention was to have it end at
12 Line 2 so that the Q and A between Lines 4 and 13
13 would actually be in.

14 CMSR. BELOW: Okay.

15 MR. CHAIRMAN: All right. Thank you.

16 MS. HATFIELD: And then the other
17 thing that has been brought to my attention is that
18 some of the exhibits that were struck may be actually
19 more properly left in, and that is because Exhibits
20 6, 7 and 8 appear on -- in the section that I propose
21 to leave in that appears between Page 17 and Page 27.
22 And those are exhibits, as I said, 6, 7 and 8. So
23 Paragraph 12 of the motion, Line A should read,
24 "Page 3, Lines 4 through 9 and 14 and 15." And what

1 that would mean is that Exhibits, I believe, 11, 12
2 and 13 -- I mean -- excuse me -- Lines 11, 12, and 13
3 for Exhibits 6, 7 and 8 would actually be allowed in,
4 if it's the Commission's pleasure.

5 MR. CHAIRMAN: Okay. Well, let me
6 address it this way, then: You know, given -- the
7 action we took yesterday was to approve the motion,
8 except for holding in abeyance Section E. And now,
9 with your corrections to Section 12, Subsection A and
10 Subsection C, our granting of your motion to strike
11 is consistent with your revisions to the underlying
12 motion. And then we'll have the opportunity for you
13 to address this, but not now.

14 MR. BOLDT: Understood.

15 MS. HATFIELD: And Mr. Chairman, would
16 you like me to file a revised motion so that you have
17 the pagination correct?

18 MR. CHAIRMAN: I guess it wouldn't
19 hurt. If you can just keep it to a letter, just
20 pointing it out so that it's in the record.

21 MS. HATFIELD: Thank you.

22 MR. CHAIRMAN: Is there anything else
23 we need to address, recognizing we'll give you an
24 opportunity at some later date, Mr. Boldt, to move to

1 reconsider on the motion to strike.

2 MR. BOLDT: Thank you, Mr. Chairman.
3 The only comment I would ask is an opportunity to
4 discuss with the expert and technically with PSNH --
5 I'm not intending to slow this process down. If the
6 intention of having my client's expert in on the
7 additional parts is not of material benefit to the
8 Board's consideration of this, we may evaluate
9 whether or not to just cede the field but for those
10 issues that are raised. I'm not saying that's my
11 course. But I want to alert that over the lunch
12 break we're going to address that and see if there's
13 a way we can speed this process up, so that we keep
14 in order, we keep going and not delaying. If there's
15 time tomorrow to reach Mr. Sansoucy on the
16 unobjected-to issues, great, fine and wonderful.

17 MR. CHAIRMAN: Okay. All right.
18 Anything else before we take the lunch recess?

19 MR. BERSAK: Yes, Mr. Chairman. Just
20 one thing. I gave to all the parties this morning,
21 to everybody, and also the clerk, the reporter and
22 the Commissioners, a red-lined version of PSNH's
23 Exhibit 7 which was meant to deal with the withdrawal
24 of Concord Steam from this docket. The parties had a

1 chance to look at it this morning. And on a net
2 basis, I did a great job. I took out too little in
3 one place and too much in another. So it's perfect.
4 But what I am going to do over lunch is I will fix
5 the two things that were pointed out to me by
6 parties, have replacement pages. And there will be a
7 new exhibit PSNH Rebuttal 4, since the one that's in
8 there relied on data request information from Concord
9 Steam, which is no longer available to us, and we'll
10 come up with a replacement exhibit based upon data
11 that is. So I just want to let you know if you had
12 some light reading to do over lunchtime, it may vary
13 just a tiny bit. Thank you.

14 MR. CHAIRMAN: Okay. Then if there's
15 nothing further, we'll take a lunch recess and resume
16 at 2:00. Thank you, everyone.

17 (WHEREUPON the lunch recess was taken
18 at 12:55 p.m, and the hearing resumed at
19 2:10 p.m.)
20
21
22
23
24

1 AFTERNOON SESSION

2 MR. CHAIRMAN: Okay. Good afternoon.
3 We're back on the record. Ready for the panel?

4 MR. BERSAK: Yes, Mr. Chairman. If we
5 can do a little housekeeping here since dealing with
6 matters in their rebuttal testimony.

7 I provided, as I indicated earlier, a
8 red-lined version of PSNH Exhibit 7, which is the
9 rebuttal testimony of Mr. Long and Mr. Large and Mr.
10 Labrecque. And inside that testimony there were two
11 more corrections that needed to be made, based upon
12 the consensus of the parties this morning. So I have
13 here replacement pages for Page 6 and Page 9, and
14 I'll have those distributed to the reporter, the
15 clerk, and for the Commissioners. And the only
16 difference between what I provided to everybody first
17 thing this morning -- and this is on Page 6 -- the
18 matters in Lines 13, 14 and 15 which were originally
19 stricken are unstricken, if there is such a word.
20 And --

21 MR. HALL: I only have Page 6 here.

22 MR. BERSAK: What's that?

23 MR. HALL: I only have Page 6 here.

24 CHAIRMAN GETZ: Okay. Off the record.

1 (Discussion off the record.)

2 MR. BERSAK: I will tell you for the
3 record that the change on Page 9 is, and we'll find
4 it here somewhere.

5 On Page 9 of what I gave you this
6 morning, on Line 2, the words that were in the
7 original version of the joint rebuttal testimony, the
8 words "Response to PSNH Data Request No. 38" will be
9 deleted and replaced by the words "Annual Commission
10 Cost of Energy Proceedings."

11 And then finally, there will be a
12 substitute exhibit for what's labeled as "PSNH
13 Rebuttal Exhibit No. 4," which is what was referred
14 to on that last change on Page 9. And we'll replace
15 what's existing Rebuttal Exhibit No. 4 with this new
16 exhibit. And that takes care of housekeeping
17 matters.

18 MS. HATFIELD: Could Mr. Bersak just
19 read the new language on Page 9 again, please?

20 MR. BERSAK: Yeah, we'll find it. I
21 know I've printed it up somewhere.

22 (Pause in proceedings)

23 MR. BERSAK: So I'll read the whole
24 sentence that begins at -- what it should read now

1 is, if we start on the bottom of Page 8, "Attachment
2 PSNH Rebuttal 4 displays the historic stability of
3 wood prices from 2006 to present, using data supplied
4 by CSC in annual commission cost of energy
5 proceedings."

6 MS. HATFIELD: And Mr. Bersak, I think
7 you just gave the Commissioners a new --

8 MR. BERSAK: They're coming your way.

9 MS. HATFIELD: Okay. Thank you.

10 MR. BERSAK: PSNH's new revised
11 exhibit, Rebuttal Exhibit 4.

12 With those housekeeping matters, the
13 panel is ready to go.

14 MR. CHAIRMAN: Ms. Hatfield?

15 MS. HATFIELD: Thank you, Mr.
16 Chairman.

17 CROSS-EXAMINATION

18 BY MS. HATFIELD:

19 Q. Good afternoon, panelists.

20 A. (Panel members) Good afternoon.

21 Q. Most of my questions, just for your reference, will
22 be beginning with following your rebuttal testimony,
23 as well as the premarked OCA exhibits. And I believe
24 that all of you have a full set of the OCA exhibits

1 before you; is that right?

2 A. (Panel members) Yes.

3 MS. HATFIELD: And Mr. Chairman, I
4 will note that you can see there are some
5 confidential exhibits, and there are some areas of my
6 cross that may go into confidential areas. But I
7 will be certain to raise that before I ask the
8 questions. I will do my best to not go into
9 confidential information. But I'll let you know when
10 I might need to go into a confidential session.

11 BY MS. HATFIELD:

12 Q. My first question, and it doesn't matter which
13 panelist addresses it, but it's with respect to the
14 cumulative reduction funds. And I'm going to refer
15 to it as the cumulative reduction fund, or the CRF,
16 if that's okay. And I just wanted to make clear.
17 You testified, Mr. Long, to this yesterday, that as
18 the PPA is before the Commission currently, the CRF
19 is for energy -- any over-market payments for energy
20 only; is that correct?

21 A. Yes.

22 Q. And does Laidlaw actually put monies into the CRF, or
23 is it really more a tracking mechanism?

24 A. (Mr. Long) It's more a tracking mechanism.

1 Q. And I believe yesterday you discussed, in response to
2 questions from Mr. Shulock, different scenarios where
3 he was questioning what might happen if there's more
4 in the CRF than the plant is worth at the end of the
5 PPA. Do you recall that?

6 A. (Mr. Long) Yes.

7 Q. Have you explored what happens if Laidlaw or a
8 successor had to seek bankruptcy protection, and what
9 would happen to the interest of PSNH ratepayers?

10 A. (Mr. Long) Yes. We did consult our lawyers,
11 including bankruptcy lawyers, when the power purchase
12 agreement was negotiated. And the agreement is
13 intended to give us a fairly good claim that could
14 survive bankruptcy.

15 Q. And on Page 13 of your rebuttal, at Lines 11 through
16 25, you discussed that there is a superior property
17 right for the purchase option; is that correct?

18 A. (Mr. Large) Yes.

19 Q. And so it's PSNH's belief that the -- that you have
20 constructed or protected the purchase option
21 agreement sufficiently so that it would survive
22 bankruptcy.

23 A. (Mr. Large) I'm not a lawyer, so I would not be able
24 to tell you the appropriateness of this claim versus

1 bankruptcy. Its intent is to protect it against all
2 other investors or parties that have an interest in
3 Laidlaw. We are first in line under the normal
4 course of operation in the use of the cumulative
5 reduction fund, should we purchase it at the
6 conclusion of the term of the contract.

7 Q. And do you know if Laidlaw's lenders are aware of
8 this term and that they haven't raised any issues
9 with it?

10 A. (Mr. Large) It is my understanding they are fully
11 aware of this term, yes.

12 Q. Also on Page 13 of your rebuttal, at Line 27, you
13 state, "PSNH also demanded an actual insurance
14 policy." Do you see that?

15 A. (Mr. Large) Yes, I do.

16 Q. Is this described in the PPA itself?

17 A. (Mr. Large) Can we have a moment?

18 (Witnesses review document.)

19 A. (Mr. Long) The answer is yes. We're just trying to
20 find the page.

21 MR. BERSAK: If I could refer the
22 panel to Page 36 of what's been marked as Exhibit 2.

23 A. (Mr. Long) Yeah, this is referring to Appendix B,
24 which is a form of purchase option agreement.

1 Appendix B to the PPA on Page 36, there's discussion
2 of title and title insurance.

3 Q. Thank you. And how did the companies, or at least
4 PSNH, arrive at the \$47 million figure?

5 A. (Mr. Long) It was negotiated.

6 Q. But is it your belief that it is sufficient to
7 protect ratepayers' interest in the cumulative
8 reduction fund?

9 A. Well, no one knows, in the cumulative reduction fund,
10 what the number will be, because obviously we haven't
11 gotten to that future point in time. It could be
12 zero or it could be some positive number. So I can't
13 say that it does or it doesn't. It's just another
14 degree of protection that we thought -- sought in the
15 event of adverse conditions, like a bankruptcy.

16 Q. Turning to Page 16 of your rebuttal, starting at
17 Line 23, you are describing what you called "myriad
18 legal constraints that other testimonies assert." Do
19 you see that line?

20 A. (Mr. Long) Line number, please?

21 Q. Line 2 on Page 16.

22 A. (Mr. Long) Yes, I see it.

23 Q. And among them you list Massachusetts' RPS
24 requirements might change, restructuring law

1 prohibitions, restructuring law requirements and the
2 lease cost plan. Do you think that any of those
3 issues might cause problems for the PPA as it's
4 currently structured?

5 A. (Mr. Long) Well, I think in some way or shape all of
6 them are addressed in the PPA, and there's some form
7 of protection built into the PPA.

8 Q. One thing that you don't have listed there is some of
9 the issues that parties have raised with respect to
10 the RPS law. Do you recall some of those issues?

11 A. (Mr. Long) I recall having a discussion with the IPP
12 counsel yesterday on this.

13 Q. And is it PSNH's understanding that today the RPS law
14 ends in 2025?

15 A. (Mr. Long) No, I don't believe it does end in 2025.

16 Q. Do you have the statute in front of you? That would
17 be 362-F.

18 A. (Mr. Long) Give me a moment. I do have the statute
19 in front of me.

20 Q. Would you please turn to the Section 362-F:3.

21 A. (Mr. Long) I have it in.

22 Q. And that section is titled, "Minimum Electric
23 Renewable Portfolio Standards"; correct?

24 A. (Mr. Long) Yes.

1 Q. And then the first sentence says, "For each year,
2 specified in the table below," and it goes on to
3 specify what providers of electricity shall do; is
4 that right?

5 A. (Mr. Long) Yes.

6 Q. And if we look at the table in that section, can you
7 tell me what year the table ends?

8 A. (Mr. Long) It's a table with a different font, and
9 it's hard to even align the columns of the table.
10 But it starts in 2008 and goes to 2015, then a blank,
11 and then 2025.

12 Q. And then there's a footnote that explains that
13 Class I increases 1 percent per year between 2015
14 through 2025; correct?

15 A. (Mr. Long) Right. That goes to the requirement, the
16 growth and the requirements, and the requirement
17 growth up to 2025 for Class I. Excuse me.

18 Q. So if you don't agree that the RPS currently ends in
19 2025, what happens after 2025?

20 A. (Mr. Long) The level of requirement continues
21 indefinitely unless changed.

22 Q. So, say for Class I, in your view, it doesn't go from
23 16 to zero. It just stays at 16?

24 A. Correct.

1 Q. Do you have the IPP exhibits with you from yesterday?

2 A. (Mr. Labrecque) Yeah, I've got them somewhere. Yes,
3 we have them.

4 Q. Thank you. Yesterday, Mr. Shulock asked you
5 questions about whether the Company had reasonable
6 projections of your RPS requirements for the term of
7 the PPA. Do you recall that?

8 A. (Mr. Labrecque) Yes.

9 Q. And he entered into evidence his Exhibit 1, which is
10 your response to OCA 1-3 and IPP 5, which is your
11 response to Staff 6 -- Set 6, No. 3. Do you recall
12 that?

13 A. (Mr. Labrecque) Yes.

14 Q. And if we turn to IPP 5, please. And this chart
15 shows, Mr. Labrecque, that you have estimated the
16 needs through 2015; is that correct?

17 A. (Mr. Labrecque) Correct.

18 Q. And you've also estimated here that the Laidlaw RECs
19 produced just over 406,000 RECs; right?

20 A. (Mr. Labrecque) correct.

21 Q. But yesterday --

22 A. (Mr. Large) On an annual basis, yes.

23 Q. Thank you.

24 Yesterday, Mr. Labrecque, I think you corrected

1 your testimony which related to the number of
2 megawatt hours that the Laidlaw facility would
3 produce; is that correct?

4 A. (Mr. Labrecque) I think that was Mr. Large's
5 typographical error. Yeah, we recall that.

6 Q. And the correction was that the facility is expected
7 to produce 484,000 megawatt hours annually?

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

9 Q. And why is the REC number 406,464?

10 A. (Mr. Labrecque) When this table was prepared, there
11 was a different size, megawatt size of the facility
12 assumed and a lower capacity factor. That's the
13 reason for the difference.

14 Q. So, should we increase that number, then, that's
15 provided in IPP Exhibit 5?

16 A. (Mr. Labrecque) Well, the exhibit stands as it is.
17 But the number that they generate each year is
18 obviously dependent upon the size and the capacity.

19 Q. So it could change a little bit from year to year?

20 A. (Mr. Labrecque) With -- yes, the capacity factor
21 would change each year.

22 Q. And do you recall as an attachment to Mr. Traum's
23 testimony was information that the Company had
24 provided related to how many Class I RECs the Company

1 has currently? And specifically, it was Attachment 7
2 to Mr. Traum's testimony, if you have that with you.

3 A. (Mr. Long) Yes.

4 A. (Mr. Labrecque) Yeah, we have them.

5 Q. One moment, please.

6 (Pause in proceedings)

7 BY MS. HATFIELD:

8 Q. Now, some of the numbers on this attachment are
9 confidential; correct?

10 A. (Mr. Labrecque) I guess I'm not exactly sure what --
11 yes. I don't know exactly which numbers we sought to
12 protect. I can take a stab at it.

13 Q. No, I'd rather you not have you do that. So what I'd
14 like to do is just bring you the redacted version, so
15 that way you can see what's --

16 A. (Mr. Labrecque) That sounds like a better idea.

17 (Witness reviews document.)

18 Q. So what I'd like to have you do is not say on the
19 record, please, because it is confidential, but just
20 so the Commission can see it -- this is Bates Page 24
21 of Mr. Traum's testimony. In response Section B,
22 you've listed the number of RECs -- this is for
23 2011 -- that the Company has that are Class I, other
24 than -- and obviously it doesn't include Laidlaw; is

1 that correct?

2 A. (Mr. Labrecque) Correct.

3 Q. There's also been some discussion about the RECs that
4 Schiller produces; is that right?

5 A. (Mr. Large) Yes, there has been.

6 Q. And it seems as though it's the Company's view that
7 the Schiller RECs do not need to be included for
8 purposes of the Company determining its need; is that
9 correct?

10 A. (Mr. Large) That is correct.

11 Q. Are there any circumstances under which the Company
12 would believe that it needs to consider utilizing the
13 Schiller RECs for its RPS compliance?

14 A. (Mr. Long) Yeah, the circumstance would be when the
15 term of the settlement agreement and the docket that
16 gave rise to the Schiller plant reaches its term and
17 then frees up those RECs to be used for RPS
18 compliance.

19 Q. So your view of the Schiller agreement and the
20 Schiller order is that you must sell the Schiller
21 RECs, and you can't use them for New Hampshire
22 compliance until the term of that agreement has
23 ended?

24 A. (Mr. Long) That was the basis of the settlement and

1 the way we proceeded. I think, absent some alternate
2 agreement of the parties and approval of the
3 Commission, that's the way we think we have to
4 proceed.

5 Q. And what if due to changes in other states' RPS laws
6 or programs the value of Schiller and other markets
7 dropped significantly, say to a dollar? Would the
8 Company's view still be that they need to sell those
9 Schiller RECs at a very low price and purchase other
10 RECs to comply with New Hampshire Class I?

11 A. (Mr. Long) Well, we would have to put the RECs to
12 market to determine the value, which in turn would
13 be -- would feed into the risk-sharing mechanism of
14 the Schiller agreement. So we need to determine the
15 market value of those RECs.

16 Q. And I would like you now to turn your attention,
17 please, to OCA Exhibit 5.

18 MS. HATFIELD: And I will note for the
19 record there is a 5P for public and a 5C for
20 confidential. And I did want the Company witnesses
21 to review the confidential version, please.

22 BY MS. HATFIELD:

23 Q. And I'd very much like to avoid going into
24 confidential session. So could you just confirm that

1 the chart on the bottom accurately reflects the
2 numbers in the Total column for the year that that
3 covers?

4 A. (Mr. Large) And when you say "on the bottom," Ms.
5 Hatfield, it has -- the document as provided to us,
6 it's actually on the back side of Exhibit 5C. Is
7 that true?

8 Q. Yes, it is. Thank you.

9 A. (Mr. Large) I can confirm that.

10 Q. It's Page 2 of 2.

11 MS. HATFIELD: Mr. Chairman, I might
12 like to do some additional questions on this exhibit,
13 but what I'll do is I'll just try to mark
14 confidential questions I have so I can group them
15 together at the end.

16 MR. CHAIRMAN: Okay. Thank you.

17 MS. HATFIELD: Thank you.

18 BY MS. HATFIELD:

19 Q. And Mr. Long, do you still have the RPS law in front
20 of you?

21 A. (Mr. Long) Are you referring to RSA 362-F?

22 Q. Yes.

23 A. (Mr. Long) Yes, I do.

24 Q. Throughout your rebuttal you referred to the

1 importance of renewable projects being financeable.

2 Do you recall that?

3 A. (Mr. Long) Yes.

4 Q. Is there anywhere in the RPS law that talks about the
5 Commission considering whether a project is
6 financeable?

7 A. (Mr. Long) Offhand, I don't see it in 362. I was
8 looking for the section that has to do with the
9 long-term purchase power agreement. I don't have
10 that one in front of me.

11 Q. I can bring that to you if you'd like. It's RSA
12 362-F:9.

13 A. (Mr. Long) Yeah, I might have it.

14 (Ms. Hatfield hands document to witness.)

15 A. (Mr. Long) All right. I guess I need to clarify my
16 earlier answer. On 362-F:1, Purpose, the last
17 sentence in that section says that it is therefore in
18 the public interest to stimulate investment in
19 low-emission renewable energy generation technology
20 in New England and, in particular, to New Hampshire,
21 whether at new or existing facilities. So, certainly
22 investments require financing.

23 Q. But looking at 362-F:9, it doesn't appear that
24 there's anything about financing in the power

1 purchase agreement section; is that right?

2 A. I'm reading it. Give me one second, please.

3 Q. Sure.

4 (Witness reviews document.)

5 A. (Mr. Long) No, I don't see the word "investment."

6 But I think it's pretty obvious that if we're asked
7 to enter into a purchase power agreement, that's
8 really what the purpose of a purchase power agreement
9 is, is to encourage investments, and investments
10 require financing.

11 Q. And you --

12 A. (Mr. Large) If I could add -- I'm sorry. But
13 Section E identifies economic development, as well as
14 environmental benefits to New Hampshire, which seems
15 consistent with the last sentence of the purpose that
16 Mr. Long referred to.

17 Q. And Mr. Long, I think you had previously testified
18 during this hearing that the PPA is a voluntary
19 contract for PSNH; is that right?

20 A. (Mr. Long) Yes.

21 Q. If we look at Page 11 of your rebuttal, please?

22 A. (Mr. Long) Okay. We have it.

23 Q. Starting at Line 27, you were asked the following
24 question: How does a company like PSNH meet the

1 state's renewable energy goals and statute which
2 provides for long-term PPAs with in-state renewable
3 resources when the developer needs some form of price
4 assurance, but when future market prices are not
5 known?" Do you see that question?

6 A. (Mr. Long) Yes, I do.

7 Q. And could one answer to that question be that the
8 Company could buy RECs either on the market or
9 through a bilateral purchase?

10 A. (Mr. Long) No, that wouldn't -- that wouldn't meet
11 the criteria on Line 28 that says "long-term PPAs."

12 Q. But could PSNH do that to meet the requirements of
13 the RPS?

14 A. (Mr. Long) Well, we could make alternative compliance
15 payments. In fact, that's why the statute gave
16 utilities and suppliers, you know, a fall-back
17 position. But yes, you could buy RECs on the market.
18 You could pay alternative compliance payments. But
19 that doesn't advance the purpose that we read earlier
20 about encouraging in-state development of renewables
21 and the part that allows for long-term purchase power
22 agreements.

23 Q. But it would comply with the RPS law itself.

24 A. (Mr. Long) Yes, but that's not what this question's

1 about. This question is about long-term purchase
2 power agreements with in-state renewables. We could
3 certainly buy RECs, if they are available, from the
4 marketplace. And it could very likely be outside of
5 New Hampshire, and it would not meet the purchase --
6 the purpose of the statute, which is to encourage
7 in-state development and economic development
8 in-state.

9 I think that's one of the huge differences, is
10 if you want those in-state developments, then you
11 have to enter agreements with in-state parties for
12 long-term arrangements.

13 Q. But could you meet the letter of the law, maybe not
14 this larger purpose that you believe exists. But
15 could you meet the letter of the law by just
16 purchasing RECs by a facility either inside or
17 outside the state?

18 A. (Mr. Long) Well, if you're saying can we comply with
19 the law by making alternative compliance payments or
20 making short-term purchases, of course, the answer is
21 yes. And that's what many suppliers in New England
22 do -- does. And I think that's one of the problems
23 of today, why renewables are not being developed,
24 because that approach does not result in the

1 investments that the statute is trying to encourage.

2 Q. On Page 12 of your rebuttal, at Line 7, you are
3 referring to Mr. McCluskey's testimony. Do you see
4 that?

5 A. Yes.

6 Q. And you state that he noted in his testimony that the
7 perfect solution for customers is to have generating
8 facilities owned by a utility and subject to
9 traditional cost-of-service regulation. Do you see
10 those lines?

11 A. Yes.

12 Q. And is that what the Company thinks is the perfect
13 solution?

14 A. (Mr. Long) I will say the word "perfect" may not be
15 the right choice of words. But I do believe that
16 utility ownership of generation is the lowest cost
17 option for customers. It's not an option right now.
18 You know, PSNH is not owning this power plant.
19 Somebody else is. But if it were available, I think
20 ownership would be the lowest cost option for
21 customers.

22 Q. Turning to Page 25 of your rebuttal -- I'm sorry --
23 Page 27, please -- starting at Line 25, you refer to
24 the PPA that the Commission approved for the Lempster

1 Wind Farm. Do you see that?

2 A. (Mr. Long) Yes, I do.

3 Q. And are some of the panelists familiar with the
4 Lempster PPA?

5 A. (Mr. Long) Yes, we are.

6 Q. Do you know if the Lempster PPA has a cumulative
7 reduction fund -- and that may require a confidential
8 response, I should say before you answer it. It
9 might be more appropriate for me to wait on that
10 question.

11 A. (Mr. Long) I don't think it does. I'm willing to
12 answer it.

13 The answer is no, it does not. As I stated in
14 our testimony here, this is the first application
15 that's a unique feature of this particular purchase
16 power agreement between PSNH and Laidlaw.

17 MS. HATFIELD: And Mr. Chairman, I
18 have copies for the witnesses, their counsel and the
19 Commission that are confidential documents from the
20 Lempster docket that I'd like to distribute now, but
21 hold my questions until the confidential portion.
22 And I think, rather than seek to have these put into
23 the record in this case, because these are exhibits
24 already in DE 08-077, what I intend to do is ask the

1 Commission to take administrative notice of that
2 docket. And as I said, my questions related to this
3 are confidential, so I will hold them at this time.

4 BY MS. HATFIELD:

5 Q. I'd now like to turn your attention to your rebuttal
6 at Page 7, please. And Mr. Labrecque, I think you
7 discussed this earlier in the hearing, or perhaps
8 Mr. Large.

9 At Line 8, you state that Schiller's current
10 wood price is \$27 per ton. Do you see that?

11 A. (Mr. Large) Yes.

12 Q. And how -- when did the price drop to \$27 a ton?

13 A. (Mr. Large) Just recently, in the few weeks
14 immediately prior to the submission of our rebuttal
15 testimony.

16 Q. And you had previously provided information in this
17 docket about the recent history of wood prices; is
18 that correct?

19 A. (Mr. Large) In response to a data request, yes.

20 Q. Yes. If you look at OCA Exhibit 2, this is the
21 response to Staff 1-22 --

22 A. (Mr. Large) I have it. Thank you.

23 Q. And if you look on the second page, Page 2 of 2 of
24 that data response, do you see there's a table at the

1 top that's titled "Wood Prices"?

2 A. (Mr. Large) I have that.

3 Q. And at the bottom of that part of the table it says
4 Q3 2010. Do you see that?

5 A. (Mr. Large) I do.

6 Q. And it says \$30.70?

7 A. (Mr. Large) Yes.

8 Q. And so your testimony now is that price has dropped
9 to \$27?

10 A. (Mr. Large) Currently for dispatch of the unit,
11 Schiller Unit 5, in the month of January 2011, that
12 price is \$27, yes.

13 Q. And does the \$27 price include all costs related to
14 the delivery of wood fuel to your site? Is it an
15 all-in cost?

16 A. (Mr. Large) That is the delivered price of wood, yes.

17 Q. So there isn't any type of fuel added for the drivers
18 who deliver the wood or anything like that?

19 A. (Mr. Large) The \$27 price incorporates all costs to
20 get the wood to Schiller Station and deliver it
21 there, yes.

22 Q. And do you have any sense of how long the price might
23 remain at \$27 a ton?

24 A. (Mr. Large) I do not.

1 Q. If you could turn now to OCA 3. It's another data
2 response. And we have provided 3P for public and 3C
3 for confidential. Do you have that before you?

4 A. (Mr. Large) I do.

5 Q. And this is a data response in another docket. It's
6 DE 10-257, which is the Company's 2011 energy service
7 case; is that right?

8 A. (Mr. Large) I have to take your word for that. I'm
9 sorry. I was not a participant in that case.

10 Q. Thank you. And this is a response, the Company's
11 response to Staff's Set 1, No. 6; correct?

12 A. (Mr. Large) That's what's identified here, yes.

13 Q. And it's dated October 21st, 2010?

14 A. (Mr. Large) It is, yes.

15 Q. And if you look at what's provided as the second page
16 of the confidential version -- and it's actually Page
17 3 of 4 in the upper right-hand column -- do you see
18 that?

19 A. (Mr. Large) I do.

20 Q. And again, I'm going to try not to go into
21 confidential information right now. But would you
22 look at the fifth column from the left.

23 A. (Mr. Large) I see that.

24 Q. And do you see also that the top of this chart has a

1 title to it?

2 A. (Mr. Large) I do.

3 MS. HATFIELD: Okay. Mr. Chairman,
4 again I'd like to just note that I'll ask a few
5 follow-ups on this in confidential session.

6 BY MS. HATFIELD:

7 Q. And could one of you describe how the price of wood
8 is regulated by the Commission? I know you discussed
9 this briefly with Mr. Shulock. But I'm wondering if
10 you can sort of walk through the process of how the
11 wood price at Schiller is regulated.

12 A. (Mr. Large) It's my understanding that we submit all
13 of our documentation associated with operation of our
14 facilities and cost of procurement for fuels and an
15 energy service reconciliation docket that's reviewed
16 by the Commission, and they judge whether the
17 operation of our plants and the associated
18 operations, like the procurement of fuel, were
19 prudent; and if so, we're allowed to recover those
20 costs.

21 Q. And do you know what type of review goes into looking
22 at whether or not the wood prices were prudent?

23 A. (Mr. Large) I have not been a participant in those
24 dockets recently. So I'm sorry. I can't give you

1 it.

2 Q. And do you know if there have been disallowances
3 related to the price of wood at Schiller?

4 A. (Mr. Large) I do not know that.

5 A. (Mr. Long) Well, I'll say, to my knowledge, there
6 have been no disallowances related to wood.

7 Q. In your rebuttal at Page 10, near the bottom of the
8 page, down at Line 31, you're discussing the
9 conversion factor. Do you see that?

10 A. (Mr. Long) Yes.

11 Q. And the current conversion factor is 1.8; is that
12 correct?

13 A. (Mr. Long) Yes.

14 Q. And on Line 33 to 34, you state that that figure was
15 a negotiated figure; right?

16 A. (Mr. Long) Right.

17 Q. Does that mean that it could be different from 1.8?

18 A. (Mr. Long) I think you mean by "be different," could
19 actual operations be different than that number? And
20 the answer would be yes.

21 Q. I was actually asking could the parties have
22 negotiated a different number, say 1.6 or 1.9?

23 A. (Mr. Long) Sure. It was a negotiated number, so the
24 parties could have come up to a different conclusion.

1 This is the conclusion the parties came to.

2 Q. And what is the purpose of the conversion factor?

3 A. (Mr. Long) Simply to convert dollars per ton of wood
4 costs into essentially dollars per megawatt hour of
5 energy costs.

6 Q. And then that is used to develop the energy price for
7 the facility under the PPA?

8 A. (Mr. Long) Yes, through the wood price-adjustment
9 mechanism.

10 Q. Mr. Long, do you recall yesterday being asked by Mr.
11 Shulock if any wood plants had asked for long-term
12 contracts with PSNH?

13 A. (Mr. Long) I don't recall the question. But there
14 have been developers who have asked for long-term
15 contracts with PSNH.

16 Q. I believe, if I'm recalling correctly, that Mr.
17 Shulock actually referenced PURPA and asked if you
18 knew of any wood plants seeking long-term contracts
19 under PURPA from PSNH. Do you recall that?

20 A. (Mr. Long) I do, but I don't believe it was counsel
21 for IPPs. I believe it was counsel for the City of
22 Berlin.

23 Q. Thank you. And your answer was that, no, you weren't
24 aware of any?

1 A. (Mr. Long) We've had no request for long-term
2 purchase agreements under PURPA.

3 Q. Are you aware of the Clean Power Development docket
4 that the Commission has opened? It's numbered
5 DE 09-067?

6 A. (Mr. Long) Yes, somewhat.

7 Q. And would you say that that's different than a plant
8 looking for a long-term contract from the Company?

9 A. (Mr. Long) Our position in that docket, and I think
10 the evidence says, that Clean Power Development has
11 not asked for a long-term pricing under PURPA. They
12 filed a complaint, but they did not request a
13 long-term pricing arrangement under PURPA -- also,
14 the subject of a Federal Energy Regulatory Commission
15 proceeding which was recently decided.

16 Q. So you are making a distinction between the complaint
17 versus them formally making a request?

18 A. (Mr. Long) Yes. And our response at the Federal
19 Energy Regulatory Commission is that they have not
20 asked for such a rate under PURPA.

21 MS. HATFIELD: One moment, please.

22 (Pause in proceedings)

23 BY MR. HATFIELD:

24 Q. Mr. Long, I think yesterday you referred to the fact

1 that RECs are resellable. Do you recall that?

2 A. (Mr. Long) No. But they are. We agree that they
3 are.

4 Q. And were you referring -- or are you referring to the
5 fact that they can be banked?

6 A. (Mr. Long) Defer to you, Terry.

7 A. (Mr. Labrecque) I think we were probably referring to
8 the fact that they can change hands a number of
9 times, that they can be bought and sold.

10 Q. And Mr. Labrecque, are you familiar with how long a
11 REC can be banked before it can't be used anymore?

12 A. (Mr. Labrecque) Yes.

13 Q. How long is that?

14 A. (Mr. Labrecque) Well, under the New Hampshire RPS
15 regulations, you can satisfy up to 30 percent of your
16 current year's requirement with a REC that was
17 created in either of the two prior years. So I guess
18 the simple answer would be two years.

19 Q. So if you had excess RECs in one year, you could bank
20 some portion of them, but only for two years?

21 A. (Mr. Labrecque) Correct.

22 A. (Mr. Large) While it may be a nit, some portion is an
23 unknown amount in a period of time that has not yet
24 occurred. So...

1 Q. Can you explain what you mean by that?

2 A. (Mr. Large) Certainly. The banking of allowances
3 would occur in year one and year two for use in year
4 three, and you would not know what your requirement
5 for RECs in year three was until that year
6 transpired.

7 Q. Yesterday there was also discussion about the various
8 types of things that might be in place at the end of
9 the PPA when PSNH could exercise its option to
10 purchase. Do you recall that?

11 A. (Mr. Large) Yes, we do.

12 Q. And Mr. Shulock was asking you questions about
13 whether the fair market value of the plant would be
14 an important number. Do you recall that?

15 A. (Mr. Long) Yes, I recall that.

16 Q. And I thought I heard -- Mr. Long, I thought I heard
17 you say that someone would purchase PSNH's option to
18 purchase without regard to the fair market value of
19 the plant. Is that what you said?

20 A. (Mr. Long) Well, if I did, I think that's not what I
21 meant. I think, as we've had exchange of Q and A, I
22 think what it came down to is, does the plant have to
23 have value in order for it -- in order for you to
24 realize the value that has -- that exists in the

1 cumulative reduction factor? It's a hypothetical
2 situation. But you would want the -- you would hope
3 the plant value would be higher than the cumulative
4 reduction factor amount. And I would agree with that
5 conceptually.

6 Q. And the value of the plant at that time might be
7 impacted by the status of the RPS law at that time?

8 A. (Mr. Long) Yes. I would add, you know, not just the
9 New Hampshire law. But what we talked about
10 yesterday was any law anywhere, where the
11 environmental attributes could have -- would have
12 value.

13 Q. Mr. Large, just to go back to our conversation about
14 wood prices, can you look at your rebuttal,
15 Attachment 7, please.

16 A. (Mr. Large) I have that.

17 Q. And this looks like it is -- it shows wood pricing
18 starting back from 2004; is that right?

19 A. (Mr. Large) Yes, it does.

20 Q. And these are wood prices at Schiller?

21 A. (Mr. Large) No, they are not.

22 Q. What do they reflect?

23 A. (Mr. Large) They reflect the prices supplied to us by
24 Concord Steam Corporation in response to a data

1 response we propounded to them about wood fuel prices
2 historically.

3 Q. And these are -- so these are the prices that Concord
4 Steam paid at their plant here in Concord.

5 A. (Mr. Large) That is correct.

6 Q. Mr. Long, you had testified yesterday, I believe,
7 that one of the important things about the Berlin
8 project is that its in PSNH's service territory. Do
9 you recall that?

10 A. (Mr. Long) Yes, I do.

11 Q. Do you know whose service territory the Lempster Wind
12 Farm is in?

13 A. (Mr. Long) It's in the New Hampshire Electric
14 Co-operative territory. It also is not a job
15 producer.

16 MS. HATFIELD: Mr. Chairman, I think
17 that concludes my cross, with the exception of a few
18 confidential questions and then cross at a future
19 point on the new Exhibit 9.

20 MR. CHAIRMAN: Okay. Thank you. At
21 this time, then, I'd ask that anyone who's in the
22 room who is not subject to the obligations of
23 confidentiality, to please exit.

24 (Whereupon non-confidential parties

1 leave the hearing room.)

2 MR. CHAIRMAN: Let me do this as a
3 formality. This is still on the public record. I
4 think this requires a vote of the Commission. So I
5 would move that we move into a confidential,
6 non-public session for hearing cross-examination and
7 testimony on confidential matters.

8 CMSR. IGNATIUS: Second.

9 CMSR. BELOW: I concur.

10 MR. CHAIRMAN: Okay. Motion carries.
11 Now we can move into a confidential record when you
12 have the chance, Sue.

13 (Pages 71 through 82 of the hearing
14 transcript are contained under separate
15 cover designated as "CONFIDENTIAL"
16 Proprietary.)

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1 (PUBLIC portion of the hearing resumes.)

2 * * * * *

3 MR. CHAIRMAN: We're back on the
4 public record. Ms. Hatfield.

5 MS. HATFIELD: Mr. Chairman, I
6 neglected to ask one other question that I had on the
7 public record. If you would indulge me, I'd like to
8 do that.

9 BY MS. HATFIELD:

10 Q. Could the panelists turn to OCA Exhibit 6. OCA
11 Exhibit 6 is a page from a book titled, Fundamentals
12 of Energy Regulation. And it's written by Jonathan
13 A. Lesser, Ph.D. and Leonard R. Giacchino, Ph.D., and
14 it was published in 2007 by Public Utility Reports,
15 Inc.

16 Have the panelists had a chance to look at
17 Page 81 from this book?

18 A. (Mr. Long) I browsed it.

19 Q. And Mr. Long, would you please read the last
20 paragraph on that page that begins with "A regulated
21 firm."

22 A. (Mr. Long) Yes. "A regulated firm does not earn any
23 return on its operating costs because those costs are
24 treated as current expenses. In other words, a firm

1 is entitled to a return of its prudently incurred
2 operating costs, not a return on them. This rate
3 treatment also applies to electric companies that
4 purchase generation from other firms. In the United
5 States, such purchase power agreements, in parens,
6 PPAs, have become far more important as the electric
7 industry has restructured. However, as we will
8 discuss, PPAs also raise interesting and
9 controversial issues as to the risk regulatory
10 utilities bear when they enter into such contracts.
11 This is because financial institutions treat such
12 contracts as debt instruments, much as if the utility
13 issued bonds. This so-called debt equivalency issue
14 raises difficult questions with regard to the overall
15 COS, because what may be a lower cost purchase source
16 of generation may raise the utility's overall cost of
17 capital."

18 Q. Mr. Long, do you think PSNH entering into the Laidlaw
19 PPA will raise these issues for the Company?

20 (Witnesses discussing)

21 A. (Mr. Long) Prior to signing the purchase power
22 agreement, we consulted with our financial and
23 accounting folks, and they advised us that there
24 won't be any debt equivalency placed on our books.

1 Q. Did they also say that it wouldn't negatively impact
2 the Company's ability to get financing?

3 A. (Mr. Long) There were no concerns about our ability
4 to get financing as a result of this PPA.

5 MS. HATFIELD: Thank you. I have
6 nothing further.

7 MR. CHAIRMAN: Thank you.

8 (Chairman and Commissioners conferring.)

9 MR. CHAIRMAN: Ms. Amidon.

10 MS. AMIDON: Thank you. I'll be
11 conducting some cross on the purchase power
12 agreement, and Mr. McCluskey will have some
13 additional questions as well. I'm not sure if Mr.
14 Frantz will have questions as well. But I just
15 wanted to let you know we've split up the
16 cross-examination in that fashion.

17 CROSS-EXAMINATION

18 BY MS. AMIDON:

19 Q. So, good afternoon.

20 A. (Panel Members) Good afternoon.

21 Q. Yesterday, I think it was Mr. Long who said that one
22 of the reasons that the Laidlaw Berlin facility was
23 attractive was due to its location in PSNH's service
24 area; is that correct?

1 A. (Mr. Long) Yes.

2 Q. Is Lempster located in PSNH's service area?

3 A. (Mr. Long) No. It's located in the service area of
4 New Hampshire Electric Cooperative, which was also a
5 purchaser of a portion of that power, and it did
6 require lines going through our territory. And as I
7 said earlier, it was not really the economic jobs
8 creator that --

9 (Court Reporter interjects.)

10 A. (Mr. Long) Not an economic driver in the way that a
11 biomass plant is.

12 Q. And Clean Power Development was mentioned as having
13 filed a complaint against PSNH. Is the proposed
14 Clean Power Development facility in PSNH's service
15 area?

16 A. (Mr. Long) Yes.

17 Q. Thank you. Most of my questions, as I said, have to
18 do with the purchase power agreement.

19 Article 21.1 says that Laidlaw BioPower's
20 address is in care of Laidlaw Energy Group, Inc. Who
21 is Laidlaw Energy Group, Inc.?

22 A. (Mr. Labrecque) Well, at the time of execution of the
23 contract, that was the -- it is the counter-party to
24 the contract. Laidlaw Berlin Biopower, LLC. This

1 notice provision in Article 21 lists their business
2 address in which to serve notices.

3 Q. So what is the relationship between Laidlaw Berlin
4 Biopower, LLC and Laidlaw Energy Group, Inc.?

5 A. (Mr. Long) Laidlaw Energy Group, Inc. has a principal
6 who worked on the negotiation of the purchase power
7 agreement.

8 Q. Are there ownership interests between the Laidlaw
9 Energy Group, Inc. and Laidlaw Biopower?

10 A. (Mr. Long) There was at one time. I'm not sure what
11 the structure is right now, who owns what percent of
12 what.

13 Q. Okay. Page 33 of the PPA, which is PSNH Exhibit 2,
14 is titled "Form of Purchase Option Agreement"; is
15 that correct?

16 A. (Mr. Long) Yes.

17 Q. Okay. In this purchase option agreement, it says
18 it's effective between PSNH; PJPD Holdings, LLC, a
19 Delaware limited company; and Laidlaw Berlin
20 Biopower. Who is PJPD Holdings, LLC?

21 A. (Mr. Long) I don't know if I know, off the top of my
22 head. But the lawyers who drafted this, their
23 intention was to get to the parties who actually held
24 the assets so that it could be recorded in the

1 registry of deeds.

2 Q. So you don't know who --

3 A. (Mr. Long) Well, as it says here, it's the site
4 owner.

5 Q. And what do they own?

6 A. (Mr. Long) The site.

7 Q. So they own the real estate that the facility is on,
8 or do they own the real estate and the facility?

9 A. (Mr. Long) I don't know, off the top of my head.

10 Q. So you don't know if they -- you know they own the
11 site, but you don't know if they have anything to do
12 with the operation of the site?

13 A. (Mr. Long) Without reading the whole thing again,
14 this was put together by lawyers. And the whole
15 intent of this is to get at those who own the
16 facilities and the property so that it would be
17 binding on them.

18 A. (Mr. Labrecque) Can I provide an additional response?

19 Q. Certainly.

20 A. (Mr. Labrecque) Item B on that Page 33 describes the
21 site owner as the sole owner in fee simple of both
22 the facility site, which is also defined above, and
23 the facility, which is defined above as approximately
24 70-megawatt electric generating facility.

1 MS. AMIDON: Well, the reason that I
2 thought that someone on the panel would know who PJP
3 Holding is, is because in Staff response to the first
4 question, the first set of data requests, we asked to
5 identify all the parties who were involved in the
6 negotiations, and it included Mr. Long, Mr. Large,
7 and Mr. Labrecque, among others. So I had expected
8 that they would know who PJP Holdings is.

9 A. (Mr. Long) Well, on that list are lawyers. On that
10 list of people who participated are lawyers. And
11 those lawyers are quite familiar with who the owners
12 are.

13 MS. AMIDON: Well, I'll just run
14 through my questions, in any event.

15 MR. BERSAK: If I may, Mr. Chairman.
16 With respect to that data request, as Mr. Long
17 suggested, when asked -- when the Company was asked
18 who was involved in the negotiations, it did include
19 Mr. Large, Mr. Long, Mr. Labrecque, Ms. Erika Menard,
20 Mr. James Vancho, Ms. Michelle Gwyne, Mr. Christopher
21 Alwarton, and myself, the last three of which were
22 lawyers for the Company. And so not all the people
23 who were included in this response are members of the
24 panel testifying today.

1 MS. AMIDON: I think I did say it
2 included those members. But --

3 MR. BERSAK: Sure. Go ahead.

4 MS. AMIDON: -- moving on.

5 BY MS. AMIDON:

6 Q. Who do you think owns the facility?

7 A. (Mr. Long) Right here, as Mr. Labrecque pointed out,
8 the site owner will own the facility site and the
9 facility.

10 Q. Okay. So, PJPD Holdings, LLC owns the facility; is
11 that correct?

12 A. (Mr. Long) Unless assigned, yes.

13 Q. Has it been assigned?

14 A. (Mr. Long) Not to my knowledge. And they are
15 supposed to give us notice.

16 Q. Okay. Now, it's my understanding that both PJPD
17 Holdings, LLC and Laidlaw Berlin Biopower are
18 subsidiaries of a new entity called NewCo. Is that
19 your understanding as well?

20 A. (Mr. Long) Yes.

21 Q. Could you explain if there's any relationship between
22 NewCo and Laidlaw Energy Group, Inc.?

23 A. (Mr. Labrecque) I can't describe the exact corporate
24 structure, the legal entities that have been

1 established by NewCo.

2 Q. Okay. Thank you.

3 So, if I'm correct, the reason that PJPD
4 Holdings has to be a party to the purchase option
5 agreement is because they own the site; is that
6 correct?

7 A. (Mr. Long) Yes.

8 Q. Is that fair to say?

9 A. (Mr. Long) Yes.

10 Q. Since PJPD is not a party to the PPA, what assurances
11 does the Commission have that they will agree to sign
12 the purchase option agreement?

13 A. (Mr. Long) The PPA is conditioned on that signature
14 happening and it being registered with the registry
15 of deeds. So if it weren't executed and registered,
16 the PPA would become null and void.

17 Q. And that would be the entire PPA?

18 A. (Mr. Long) Yes.

19 Q. Is that the opinion of your lawyer as well?

20 A. (Mr. Long) Well, it's what we insisted on when we
21 were putting the PPA together, that -- insistence by
22 me and the lawyers that this was not binding until
23 all conditions were met.

24 Q. Do you have any idea when that will take place,

1 Mr. Long?

2 A. (Mr. Long) Certainly before the PPA goes into effect.
3 So --

4 Q. It's contingent. I understand.

5 A. (Mr. Long) Yeah. Again, off the top of my head,
6 without seeing if we had any dates that would be
7 required. But certainly before the plant produces
8 any power it would have to be done. Probably like to
9 be done sooner.

10 Q. I'm still looking at Page 33 of PSNH Exhibit 2, which
11 is the Appendix B, Form of Purchase Option Agreement.
12 At Paragraph C, it talks about LLB [sic] and site
13 owner -- well, I'll just read it.

14 "LLB [sic] and site owner anticipate that,
15 subsequent to the execution and recording of this
16 option agreement, site owner will continue to be the
17 sole owner in fee simple of and will lease the
18 facility and facility site to LBB under a sale,
19 slash, lease-back financing arrangement, with all
20 such arrangements being expressly made subject and
21 subordinate to PSNH's right hereunder." Could you
22 describe "lease-back arrangement"?

23 A. (Mr. Long) No, I can't, because PSNH is not a party
24 to that sale/lease-back arrangement. And what this

1 provision is doing, it says, regardless of that
2 sale/lease-back arrangement, that PSNH's rights will
3 be sub -- will be -- that sale/lease-back will be
4 made subordinate to PSNH's rights, which means PSNH
5 has a claim before the holders of the sale/lease-back
6 agreement. In other words, we wanted to be first in
7 line to make any claim against the facility and the
8 site, notwithstanding the sale/lease-back
9 arrangement.

10 Q. So you don't know who the buyer and the seller is in
11 that, or who the lessor and lessee is in that
12 sale/lease-back?

13 A. (Mr. Long) Well, it's shown on -- you know, Exhibit
14 GRM2 shows the lesser/operator. But the owners may
15 not be necessarily the operators and the lessee on
16 the plant. And so we just wanted in this particular
17 document to make sure that it was binding on those
18 who actually owned the facility and the site, not
19 those who necessarily operated the facility.

20 Q. I notice that the title of this document is "Form of
21 Purchase Option Agreement." Is it possible that will
22 change before it's signed?

23 A. (Mr. Long) I would say the intent is only for
24 technical reasons. It has to be in a form that's

1 acceptable to PSNH, a sole option. So it has to
2 be -- have enough rigidity to be acceptable to us.

3 Q. Is it true that PSNH will seek the Commission's
4 approval of any revision to the purchase option
5 agreement prior to its execution?

6 A. (Mr. Long) Well, I think if the Commission approves
7 this power purchase agreement, they're really
8 approving this form in the agreement. And I don't
9 see where we have to come back for approvals for
10 minor technical fill-ins here.

11 Q. Just one moment, please.

12 A. (Mr. Long) For instance, it doesn't have dates on it,
13 doesn't have -- it's not executed yet.

14 Q. One moment, please.

15 (Pause in proceedings)

16 BY MS. AMIDON:

17 Q. Would you refer to Page 30 of Exhibit 2. And I call
18 your attention to 26.7.

19 A. (Mr. Long) Yes, I have it.

20 Q. Would you read that, please.

21 A. (Mr. Long) Amendment. It's titled "Amendment." "No
22 amendment of all or any part of this agreement shall
23 be valid unless it is reduced to writing and signed
24 by both parties and, in the case of a material

1 amendment, approved by the NHPUC."

2 If you want to relate that to our discussion,
3 you know, my comment is we don't anticipate any
4 material change to this form of agreement. As I
5 mentioned, I call it technical corrections. Dates
6 being filled in --

7 Q. But if there was a material change, you would be
8 coming to this Commission for approval; is that
9 correct?

10 A. (Mr. Long) Yes. That's what 26.7 says. Thank you.

11 Q. Okay. The POA is identified as an appendix to the
12 purchase power agreement. So, just to be clear, is
13 PSNH asking that the Commission preapprove PSNH's
14 authority to exercise the POA in this proceeding?

15 A. (Mr. Long) Again, I'm trying not to play lawyer. But
16 we expect if the Commission approves this power
17 purchase agreement, they are approving us moving
18 forward with the POA.

19 Q. So you would not be coming back to the Commission to
20 seek additional review of that authority?

21 A. (Mr. Long) No, because this is already -- by
22 approving this contract, they have approved the form
23 of the purchase option agreement. And as long as
24 there was no material change, we would move forward.

1 Q. One moment, please.

2 MR. BERSAK: I'm not sure the witness
3 understood the question. I don't want to have
4 confusion on the record, but I don't want to jump in
5 the middle of Attorney Amidon's questioning.

6 But I believe the question, Mr. Long,
7 was: Do you expect that this Commission, as part of
8 this docket, is approving PSNH's exercise of the
9 option, not entering into it, but actually exercising
10 it in purchasing the plant 20 years from now?

11 WITNESS LONG: You're right. I
12 misunderstood the question. I thought the question
13 was approving this form of the purchase option
14 agreement.

15 BY MS. AMIDON:

16 Q. Well, what is your answer then?

17 A. (Mr. Long) You're talking about a transaction, if it
18 happened 20 years after in-service date? Is that
19 what we're referring to now?

20 Q. Are you asking for the Commission, in this
21 proceeding, to approve or to authorize the Company to
22 enter into a purchase option agreement for -- yeah,
23 to agree that the -- are you asking the Commission
24 for authority to purchase the plant in 20 years, in

1 this proceeding?

2 A. (Mr. Long) What I anticipate 20 years from now,
3 sometime in the future when information is known as
4 to whether the cumulative reduction factor is greater
5 than zero and PSNH determines what or how they might
6 exercise that option, that there would be some review
7 and some proceeding before the Commission.

8 Q. So you're not asking for the Commission to approve
9 your -- to authorize or to recognize or otherwise
10 delegate authority to the Company to exercise a
11 purchase of the plant in this proceeding.

12 A. (Mr. Long) I think I agree -- yes. The answer is
13 yes, we would actually exercise the purchase option
14 agreement, but not the actual purchase, if that was
15 to be what is exercised 20 years after the in-service
16 date.

17 Q. So, based on your answer then, I would understand
18 that the Company -- and it may not be you,
19 Mr. Long -- but 20 years from now, would be making a
20 filing with the Commission requesting authority to
21 purchase the plant with the -- including the market
22 price of the plant and the various assessments that
23 are contemplated in the exercise of the purchase
24 option arrangement, and asking the Commission for

1 authority to go forward with the purchase; is that
2 correct?

3 A. (Mr. Long) Yeah, That's correct. And when you think
4 about it, it's -- we would have to make a filing with
5 the Commission for something that affects rates, some
6 form of return of that value. And there would be a
7 duration associated with that, an amount associated
8 with that, and a means associated with that. Not
9 knowing what any of those would be, it's something
10 that would have to be addressed in the future.

11 Q. Thank you. If and when PSNH exercises its purchase
12 option, what happens to any mortgages or other liens
13 on the facility and the facility site?

14 A. (Mr. Long) Again, not taking the time to read the
15 contract, it's the owner's responsibility to clear
16 all liens. We want a clear and clean property.

17 Q. But you're purchasing it from the lessee; is that
18 correct?

19 A. (Mr. Long) At that point in time, the lessee may not
20 be in the picture anymore. That's why we are -- this
21 agreement is with the actual owner --

22 Q. And so --

23 A. (Mr. Long) -- and why it has the superior standing to
24 what the lessee has.

1 Q. Okay. I apologize for interrupting you.

2 Then, PJPD Holdings, Inc. or its successor would
3 be responsible for paying off any mortgages or liens?

4 A. (Mr. Long) Yes, that's my recollection, without going
5 through the contract and pointing to the exact
6 provisions. Oh, excuse me. My colleague says look
7 at Page 34.

8 Q. It's always good to have a colleague.

9 A. (Mr. Long) It is.

10 Q. Could you show me what part? Are you looking at
11 the --

12 A. (Mr. Long) If you look at the very last paragraph on
13 Page 34, it's Section 4, Purchase Price, Section A,
14 and assuming the facility assets are sold free of all
15 financing liens and encumbrances. So the owner is
16 responsible for all financing liens and encumbrances.

17 Q. Okay. Thank you. That was helpful.

18 Do you know if Gestamp Corporation has an
19 interest in the Laidlaw facility?

20 A. (Mr. Long) I don't know. Not to my knowledge. But I
21 don't know.

22 Q. Do you know if Clean Power Development has any
23 interest in the Laidlaw facility?

24 A. (Mr. Long) Again, I don't know if Clean Power does or

1 doesn't.

2 Q. Do you know if Clean Power Development or Gestamp
3 Corporation have any interest in the project?

4 A. (Mr. Long) Talking about the Laidlaw project.

5 Q. Correct.

6 A. (Mr. Long) I am not aware of Gestamp having any
7 ownership interest in the Laidlaw project. The
8 answer is I don't know.

9 Q. Okay. Well, that's fair enough.

10 I have some questions about some of the
11 definitions section, which I know is ironic because
12 they're definitions. But perhaps you can help me
13 understand this all a little more clearly.

14 One of the things mentioned at Page 6 of PSNH
15 Exhibit 2 at Article 1.60 is seller-required
16 approvals. And it states that seller-required
17 approvals, which in this case is Laidlaw and not
18 PJPD, includes approval from the PUC, quote, to the
19 extent applicable to seller's ability to operate
20 within New Hampshire, unquote. Could you explain
21 what that phrase means, "to the extent applicable to
22 seller's ability to operate within New Hampshire"?

23 A. (Mr. Long) I think this might go to the Site
24 Evaluation Committee. I don't know for sure. Again,

1 I'm not a lawyer. But I think they just wanted to
2 protect themselves; that if they do need approval
3 from New Hampshire PUC, they want to make sure that
4 they had the option of not going forward if they
5 didn't get it. But I don't know what that approval
6 would be.

7 Q. Okay. Moving to a different section outside of the
8 definitions for now. It's Article 3.3 on Page 7.
9 And Article 3.3 says, "Facility shall acquire its
10 status as a, quote, qualifying facility, unquote,
11 pursuant to 18 CFR Part 292, prior to the in-service
12 date and maintain such status throughout the term."

13 Are PSNH's obligations under the PPA contingent
14 on Laidlaw Berlin facility obtaining this status?

15 A. (Mr. Long) Yes.

16 Q. Why?

17 A. (Mr. Long) Again, I'm not a lawyer, so bear with me
18 if I'm not a hundred-percent correct. But it's that
19 setting that gives this Commission authority over the
20 contracts, as opposed to us being before the Federal
21 Energy Regulatory Commission.

22 Q. I'm not sure I understand. And I appreciate, you
23 know, that you say you're not a lawyer. But I don't
24 understand this part very well at all. Are you

1 saying that the only way that this PPA could come
2 before the Commission is if Laidlaw was a qualifying
3 facility?

4 A. (Mr. Long) You know, my lawyer's going to stand up if
5 I get too far out of line here.

6 Q. He's waiting.

7 A. (Mr. Long) But wholesale power transactions are the
8 jurisdiction of the federal government and the
9 Federal Energy Regulatory Commission. And my
10 understanding is that's delegated to states for
11 certain qualifying facilities. Beyond that, the
12 State of New Hampshire has set forth the basis for
13 long-term purchase power agreements in its own RSA.
14 So I think the way all those things work together is
15 why we're here today.

16 Q. Well, how does -- does that have any impact if
17 Laidlaw qualifies as a QF, which is short for
18 qualifying facility? How is --

19 A. (Mr. Long) Well, if this Commission doesn't have
20 jurisdiction, then, sure, it does.

21 Q. No. I was going to say how does that affect -- or
22 does that -- let's say that the PPA is not approved.
23 And I'm just using this to try to ask another
24 question. Assume, then, that Laidlaw goes ahead and

1 PPA?

2 MR. BERSAK: Mr. Chairman, we're
3 really getting into an area of jurisdiction of
4 federal authority over state authority. I'm not sure
5 that the panel is qualified to answer that question.

6 MS. AMIDON: That's fair enough. I'm
7 just trying to understand why -- you know, why that
8 section was in the contract. And I thought it was
9 important for the Commission to know that that was
10 one of the conditions in the contract. I'm ready to
11 move on. I don't need to -- thank you.

12 BY MS. AMIDON:

13 Q. Section 3.2 -- and I'm not going to go through every
14 section. But this one says, "Seller shall ensure
15 that the facility shall use biomass fuel as its
16 primary energy source."

17 So I guess my question is, how much non-biomass
18 fuel can be used pursuant to this section?

19 A. (Mr. Labrecque) That would not be controlled by the
20 PPA. But what is relevant is that, in order for
21 there to be a renewable energy certificate created by
22 a megawatt-hour production, the facility is going to
23 have to qualify for Class I, as a Class I resource,
24 and follow the fuel source requirements contained

1 within the RPS laws. So that is -- there's no hook
2 in the PPA that does that, other than if they don't
3 create a REC, they don't get paid for a REC.

4 A. (Mr. Long) And I would add, for those who may not
5 know, the reason the word "primary" is there is
6 sometimes when you start up a boiler, you have to use
7 another fuel to start up that boiler until your
8 primary fuel ignites and can be fed continuously.
9 For example: At our Schiller plant, when we start
10 from coal, we use natural gas to start up until the
11 boiler reaches the right characteristics that wood
12 will burn on a sustained basis. So that's why we use
13 the word "primary." Sometimes you need other fuels
14 to start up the boiler.

15 Q. So, even if you used other fuel to start it up, you
16 would still be pricing the energy produced with the
17 wood price adjustment?

18 A. (Mr. Long) Well, it's usually a very small
19 percentage. And this is what Rick is referring to.
20 It's a very small percentage. It's recognized it's
21 really incidental and not significant to the overall
22 burn in the boiler. And the environmental regulators
23 typically recognize it in the permit for incidental
24 burning of fuel.

1 Q. So it would still be priced using the pricing terms
2 in the contract, including the wood price adjustment?

3 A. (Mr. Long) Again, you know, I'm not a power plant
4 operator. But this is before the power plant begins
5 operating and producing megawatt hours. You're
6 warming up the boiler to get it up to specification,
7 pressures and temperatures. And by that time, by the
8 time you get it up to pressures and temperatures,
9 you're burning wood.

10 Q. Without belaboring the point, though, it just has to
11 be primarily biomass. But there could be some energy
12 used. Construction debris?

13 A. (Mr. Long) No.

14 A. (Mr. Labrecque) No. That's -- well, let me say this:
15 If we, PSNH, as the buyer, ever felt they weren't
16 complying with 3.2, or some of the preambles, where
17 the parties are agreeing to buy the output of a
18 wood-fired facility, we could pursue actions under
19 the PPA, whatever remedies are available. You know,
20 we're buying a biomass facility. We're not buying a
21 natural gas-fired facility.

22 Q. Thank you. That's fine.

23 I'm moving along to Article 4. Article 4 begins
24 by saying that PSNH's obligations to begin the

1 purchase of products is contingent upon the
2 satisfaction of the following conditions... and if
3 you go to Article 4.1.2, this is one condition. And
4 it says, "PSNH has received evidence to its
5 reasonable satisfaction that seller has obtained all
6 permits, licenses, approvals and other governmental
7 authorizations needed to commence commercial
8 generation of products, including certification to
9 produce New Hampshire Class I RECs."

10 So what is the status of the efforts to certify
11 the facility to produce Class I RECs?

12 A. (Mr. Labrecque) I'm not aware that they've made a
13 filing to the Commission seeking qualification.

14 Q. Thank you. Do you have any -- other than the Site
15 Evaluation Committee and approval by this Commission,
16 do you know what is meant by "permits, licenses,
17 approvals and other governmental authorizations"? It
18 could be nothing specific, Mr. Long. But I just
19 didn't know if there was something specific that was
20 in here that was intended to be included.

21 A. (Mr. Long) Not specific. I mean, the word "all" is
22 used there. Of course, from our point of view, they
23 have to get "all" of the permits, et cetera, et
24 cetera before this agreement can take effect.

1 A. (Mr. Large) It certainly will include all
2 environmental permits for air emissions. If there's
3 water use on the property, licenses will be -- if any
4 crossings or easements are necessary. It's the wide
5 array of things that will be necessary for them to be
6 able to operate within the law.

7 Q. Understood. Thank you.

8 One of the other conditions is Article 4.1.3,
9 which is, "PSNH has received from the NHPUC a final,
10 non-appealable decision acceptable to PSNH in its
11 sole discretion approving and allowing for full cost
12 recovery of the rates, terms and conditions of this
13 agreement."

14 Is PSNH asking that all costs incurred in
15 connection with its -- the proposed PPA to be fully
16 recovered through rates by using the term "full cost
17 recovery" in this section?

18 A. (Mr. Long) Yes.

19 Q. If the answer is yes, is the Company then asking the
20 Commission to approve full cost recovery of rates in
21 this proceeding?

22 A. (Mr. Long) Yes.

23 Q. Okay. Thank you.

24 So I hope that this is not repetitive. But if

1 the Commission approves the PPA and it goes into
2 effect, are there any circumstances in which the
3 Commission would have additional review and approval
4 authority in a separate proceeding before full cost
5 recovery would be allowed?

6 (Discussion among panel members.)

7 A. (Mr. Long) It would take me a while to review every
8 term in the agreement. But there is a provision that
9 disputes can come before this Commission. There are
10 provisions of this contract that says we have to
11 operate in good utility practices. I mean, there's
12 some form of review. But I don't know. If you want
13 to go me to go through the pages... remedies... maybe
14 not the Commission, but the State of New Hampshire.

15 Q. For example: Since you're asking for full cost
16 recovery, would there be an opportunity, for example,
17 for the Commission to determine -- go back and review
18 expenditures to determine if they were prudently
19 incurred?

20 A. (Mr. Long) Expenditures by the owner?

21 Q. By PSNH. Any costs. I mean, for example, we've
22 talked about some provisions in the contract which
23 would allow you to reimburse Laidlaw for capital
24 expense that might have to be incurred to keep the

1 facility in compliance with environmental
2 regulations. Would you then -- would the Commission
3 then have an opportunity before any such expenditures
4 to come back and determine whether the Company
5 prudently incurred those expenditures?

6 A. (Mr. Labrecque) Well, I would say, in general, that
7 this PPA, like the Lempster PPA, or any of our
8 purchases, would be part of the rate filings, part of
9 the annual reconciliations. And the administration
10 of it would certainly be subject to review. You
11 could review whether or not we complied with all the
12 terms and conditions and did proper invoicing and did
13 proper accounting for the wood price adjustment, et
14 cetera. If there was the capital expense you
15 referred to, you know, I guess I can't say under what
16 conditions that would come before the Commission.

17 Q. Well, you know, I know that Mr. Long is looking to
18 see what provisions in the contract might be subject
19 to the Commission.

20 But what I'm hearing in response to my question
21 is that the Company does not envision coming to the
22 Commission for a review of the prudence of its
23 actions or expenditures of this contract, except in
24 connection with the energy reconciliation docket that

1 occurs each year.

2 A. (Mr. Labrecque) Correct.

3 Q. So, in connection with that, I just referred to
4 Section -- Article 8.1 of the contract. When I
5 referred to possible improvements that Laidlaw would
6 pay for which PSNH would have to compensate them, I
7 was referring to Article 8.1. And this is a section
8 that includes the concept that PSNH may pay the
9 seller for any expenditures needed to increase the
10 value of the products. Do you agree?

11 A. (Mr. Labrecque) Yes. This provides --

12 Q. I don't want to go into long detail on this because I
13 know Mr. Shulock asked questions. So I'm not putting
14 a lot of foundation for my question here. But this
15 is the one, you'd agree with me that this is where
16 PSNH could pay the seller for expenditures needed to
17 enhance the value of the products, including
18 renewable energy products?

19 A. (Mr. Labrecque) Correct.

20 Q. Now, does the Commission have any kind of role in
21 pre-approving or reviewing after the fact the costs
22 associated -- that might be associated with this
23 section, paid by the Company to Laidlaw?

24 A. (Mr. Long) Probably need legal help on that one. But

1 as a matter of practice, we would come before the
2 Commission to see if they were accepting that, so
3 that we didn't have a risk.

4 You mentioned Section 26.7 that talks about a
5 material amendment. I'm not sure if I would say it's
6 a material amendment or not, but certainly a material
7 event.

8 Q. Well, it is a material event. But that only pertains
9 to material amendments to the PPA. I mean, these are
10 already -- these are provisions in the proposal
11 before the Commission right now.

12 A. (Mr. Long) I understand that. As you pointed out, I
13 probably won't be here 20 years from now, but --

14 Q. I probably won't either.

15 A. (Mr. Long) But, you know, our practice is anything of
16 such a material thing we would bring to the
17 Commission, just to get some sort of review. I guess
18 I would need a lawyer to tell me exactly if there was
19 a legal requirement. It certainly would be good
20 business practice to seek review.

21 Q. Well, it's certainly something that the Commission
22 could consider if it's not clear in the contract in
23 connection with its authority under RSA 362:9(I). It
24 could say -- put that as a condition on --

1 A. (Mr. Long) Right. And there's other parts of the
2 agreement. I just lost the page. But there's
3 another one. Okay. It's on 25.3 that talks about
4 arbitration. It says, "Except in cases where
5 dispute" --

6 (Court Reporter interjects.)

7 A. (Mr. Long) Page 28, Article 25.3 talks about
8 arbitration. It says, "Except in cases where the
9 dispute is subject to the NHPUC..." So, clearly, you
10 know, it's contemplated that some disputes may be
11 subject to the jurisdiction of the PUC.

12 Q. Well, I think -- I don't think this section -- I'm
13 not hearing that this section contemplates a role for
14 the Commission in either approving or reviewing any
15 costs that -- or payments that PSNH may make to
16 Laidlaw under Article 1.1 -- I mean 8.1.

17 A. (Mr. Long) Yeah, I don't see it in 8.1. Beyond that,
18 I would have to have advice from counsel.

19 Q. Can you point out to me in the PPA how the cost
20 associated with implementing 8.1 would be calculated?

21 A. (Mr. Long) You're talking about a situation where
22 there's a capital addition required that would add
23 some value to the plant? Is that --

24 Q. Yes. Or maybe if it's not in the PPA, could you

1 explain -- which I don't believe it is -- could you
2 explain to me how those costs would be determined?

3 A. (Mr. Long) Well, I think it's something that would
4 have to be worked out between the parties. And,
5 obviously, it would probably start with what are the
6 costs of this addition and what are the benefits and
7 when do they occur, and then the parties would have
8 to agree to whether or not it should go forward.

9 Q. Is the Company asking in this proceeding for
10 pre-approval of full recovery of all these unknown
11 costs or any of these unknown costs as part of the
12 condition described in Article 4.1.3?

13 A. (Mr. Long) I think you raise a good point, in that
14 you're saying, if there is a substantial change to
15 the facility itself and the parties are willing to go
16 forward because we feel it's a net positive. I'm not
17 sure if I see where that's required by the
18 Commission. But as I said, that's something I would
19 certainly would be tempted to bring forward to the
20 Commission, regardless.

21 Q. But if the Commission approved this PPA, is it the
22 Company's position that they would be supporting or
23 essentially pre-approving full recovery of any of
24 these costs in Article 8.1 as part of its approval?

1 A. (Mr. Long) Yeah. Again, you're asking me for a legal
2 interpretation. I think the Commission has general
3 authority over the setting of rates. So if you
4 attempt to change the rate, I would think the
5 Commission has a role.

6 MS. AMIDON: Mr. Chairman, I'd like to
7 make a record request to have the Company answer the
8 question of whether the Commission has authority to
9 review Article 8.1, Expenditures, in a subsequent
10 proceeding.

11 MR. CHAIRMAN: Mr. Bersak, is that
12 something you can provide?

13 MR. BERSAK: We shall take care of it
14 expeditiously.

15 MR. CHAIRMAN: Then we will reserve
16 what would be, I guess, Staff's next --

17 MR. BERSAK: I would propose that we
18 just do it on the record. I think we'll be able to
19 do it off the stand, Mr. Chairman.

20 MR. CHAIRMAN: Okay. Then let's go in
21 that direction.

22 MS. AMIDON: Thank you.

23 BY MS. AMIDON:

24 Q. Also in Article 8.1, it goes on to say that, under

1 certain conditions where seller can't transfer to
2 PSNH the value of any renewable products resulting
3 from a change in law, the seller would pay PSNH the
4 amount the seller receives, net of any costs, tax or
5 expense seller incurs to receive such amounts.

6 So, in the event that that happens, does PSNH
7 plan to credit the amount of payment made by the
8 seller to PSNH back to customers?

9 A. (Mr. Long) Yes. All costs as defined in this
10 contract would go to the customers.

11 Q. And how would that be done?

12 A. (Mr. Long) Through the payments we make to Laidlaw.

13 Q. Are you then saying that any such benefit that the
14 Company received would go into the -- I want to call
15 it the CFR, but it's not that. It's CRF.

16 A. (Mr. Labrecque) Yeah. No, it would -- it would flow
17 directly into the cost and revenues of the PPA. It
18 would be a direct credit to customers in the month in
19 which the funds were received, or credited to our
20 payment to them in that month.

21 Q. Great. Thank you.

22 Now I want to turn to Article 5.1, which is on
23 Page 8 of Exhibit 2. And it states, "Subject to the
24 terms and conditions of this agreement, seller shall

1 sell and deliver, and PSNH shall purchase and accept
2 delivery of 100 percent of the products produced by
3 the facility."

4 Appendix A is referenced. And Appendix A
5 states, "The facility will be designed to have a net
6 electric output at standard conditions of
7 approximately 64-megawatts winter and 61-megawatts
8 summer. What is meant by "standard conditions"?

9 A. (Mr. Long) I would -- Terry might be able to help me
10 better. But I recall --

11 (Court Reporter interjects.)

12 Q. Say again, please.

13 A. (Mr. Long) Normal, steady-state operation of the
14 unit.

15 A. (Mr. Large) There are seasonal differences, in terms
16 of the atmospheric conditions that affect efficiency
17 of the unit. And efficiency of the unit can cause
18 higher or lower output to occur. So, typically, a
19 standard design basis will assume a normal, flat line
20 of atmospheric conditions, air temperature
21 conditions, water temperature conditions, which
22 certainly vary as the seasons of the year vary.

23 Q. So, for a power plant operation, what would be winter
24 hours -- winter months?

1 A. (Mr. Large) Easier to describe summer months.

2 Q. Okay.

3 A. (Mr. Large) So, typically, June, July, August and
4 September. Winter are the other eight months of the
5 year.

6 Q. Great. Thank you.

7 And what is meant by the use of the word
8 "approximately"? It says, "approximately
9 64-megawatts winter and approximately 61-megawatts
10 summer."

11 A. (Mr. Large) In my discussion about the seasonality,
12 weather conditions that we've experienced over the
13 last two days would be certainly more favorable to
14 higher output. So while you might say 64-megawatts
15 on a day like the last few, it might be capable of
16 producing more than 64; whereas, in the -- while
17 summer, for capacity purposes, might be defined as
18 January, February -- or pardon me -- June, July,
19 August and September, there are warm days in May
20 where the output in the unit might be reduced below
21 that 64-megawatt.

22 Q. Other than the PPA, is there any other document that
23 states the operation and the output of the facility
24 that PSNH has entered into with Laidlaw?

1 A. (Mr. Long) No. This PPA is the governing document
2 between the business relationship of the two
3 entities.

4 Q. Okay. In connection with this section -- does the
5 PPA allow Laidlaw to expand at any time before or
6 during the term the output of the facility above the
7 level specified in Appendix A? And I'm specifically
8 thinking of Article 8.1, which allows investments
9 under certain circumstances in increasing the value
10 of the products, which include, I think, energy.

11 A. (Mr. Long) Section 8.1, I think the part you're
12 referring to is referring to increasing the value of
13 the products as opposed to increasing the product.

14 Q. So, does any part of this PPA allow Laidlaw to expand
15 the size of the facility?

16 A. (Mr. Long) I don't see that. But Laidlaw might argue
17 that. But, no, I don't see it in there.

18 Q. Well, if Laidlaw argued that, would you then come
19 before this Commission to determine whether you would
20 be obligated to purchase the additional output?

21 A. (Mr. Long) Well, we would be bound by the dispute
22 resolution process in the power purchase agreement.

23 Q. Having said that, if Laidlaw expands the output of
24 the facility above the level set out in Appendix A,

1 is it PSNH's position that you're obligated to
2 purchase all of the incremental products produced as
3 a result of that expansion?

4 A. (Mr. Long) This is the one that we hesitate on, and
5 obviously we have in our data response, because if
6 this project is very valuable, we may want it to be
7 larger. But it's -- but absent -- as in anything
8 else, we would be guided by the contract and what's
9 in Appendix A.

10 Q. Well, if the answer was yes, the Commission approves
11 the PPA and Laidlaw subsequently expanded the
12 facility, would PSNH seek approval by the Commission
13 for cost recovery of such additional purchases of
14 energy from the ratepayers?

15 A. (Mr. Long) If we -- like I said, we'd be bound by
16 Exhibit A. And if we felt that something was greater
17 than Exhibit A, and we thought it had value, you
18 know, we might argue that would be a material change
19 and that had to come before the Commission. I mean,
20 that's one argument someone could make.

21 Q. Okay. One moment, please.

22 (Pause in proceedings)

23 BY MS. AMIDON:

24 Q. Okay. On Page 11 of PSNH Exhibit 2, the PPA

1 describes the right of first refusal and the purchase
2 option. And as I read that section, it talks about
3 if the seller desires to sell the facility. And
4 there's some additional words there that I'm
5 omitting. It says the seller shall submit a written
6 offer to sell all or such portion of the facility,
7 including any associated interests or rights in the
8 site described in the offer to PSNH.

9 What is meant by "associated interests or rights
10 in the site"?

11 A. (Mr. Long) Anything that's required to operate the
12 plant. You know, if you buy something, you want to
13 be able to have all rights associated with that so
14 that you could operate --

15 (Court Reporter interjects.)

16 A. (Mr. Long) -- you could continue to operate the
17 plant.

18 Q. So this could be rights of way, it could be wood
19 stock, things of that nature?

20 A. (Mr. Long) Yes. Agreements they might have with
21 other parties that are necessary for the operation of
22 the plant. Any and all of the above.

23 Q. So, under this section, it says the seller -- it
24 references the seller. And the seller is defined as

1 Laidlaw. So, does that mean that the article doesn't
2 apply to PJPD? Because I think that you testified
3 that they actually own the facility.

4 A. (Mr. Long) As I recall, the reference to the purchase
5 option agreement refers to those who actually hold
6 the asset. The obligation of the seller is to cause
7 those parties to be bound by this agreement. So --

8 Q. Where does it say that?

9 A. (By Mr. Long) Well, I'll have to read through it,
10 but... well, one of the places that shows it is on
11 Page 7, 2.4. If ownership or operating control of
12 facility is transferred to the third party, then
13 seller shall include or cause to be included as part
14 of the transfer and sale agreement with the third
15 party the obligation that the new owner and/or the
16 new operator shall assume all the rights and
17 obligations of seller set forth in this agreement.

18 Q. Right.

19 A. (Mr. Long) So that's one of the places. I'm sure
20 there's others if I read through the whole thing.

21 Q. But the right of first refusal is different from the
22 POA, where PJPD Holding is directly mentioned. But
23 it's your position that Laidlaw would have the duty
24 to compel PJPD to submit any offers if it wanted to

1 sell the facility?

2 A. (Mr. Long) Yes.

3 Q. I'm having a hard time reading that when the seller
4 is defined as Laidlaw. But we'll move on.

5 Do you know if Laidlaw has attempted to sell the
6 property?

7 A. (Mr. Long) No. I mean, there's been a change of
8 ownership over time. But if you're referring to are
9 there any current attempts, I don't know.

10 Q. Okay. Now, Article 23 -- let me find the page -- is
11 titled "Change of Law." One moment.

12 Pardon me. I'd like to go back to the right of
13 first refusal issue and just ask an additional
14 question.

15 What authority does the seller have to cause
16 other parties to comply with the right of first
17 refusal? And the seller has a relationship with the
18 owner? I just am very confused how the right of
19 first refusal works, since it referenced Laidlaw and
20 they don't actually own the facility. They
21 apparently lease it. So what authority does the
22 seller have to cause other parties to comply with the
23 right of first refusal for PSNH?

24 A. (Mr. Long) Maybe that's best to be taken up in a

1 record request so I don't have to read through whole
2 contract while I'm on the witness stand.

3 MS. AMIDON: All right. I'll accept
4 that, Mr. Chairman.

5 MR. CHAIRMAN: Mr. Bersak, is that
6 something that's --

7 MR. BERSAK: That one we will do in
8 writing. So ...

9 MR. CHAIRMAN: Okay. We'll reserve an
10 exhibit number --

11 CLERK: Eleven.

12 (PSNH Exhibit 11 reserved.)

13 Q. Going back to Article 8.1, I realize there was a
14 question I wanted to ask, which I didn't.

15 One of the additional products or value --
16 enhancing the value of the products would include
17 renewable energy products. Would PSNH have to pay
18 any additional money to Laidlaw in the event there is
19 a federal law created that gave a renewable energy
20 value to Laidlaw that you would receive under this
21 contract? Would you have to pay any additional money
22 to Laidlaw?

23 A. (Mr. Long) No.

24 Q. Okay. Thanks.

1 Now, under the Change of Law provision it
2 states -- there's a phrase in there that said, "In
3 the event that there is a change in law resulting in
4 elimination of or material adverse effect upon a
5 material right or obligation of the party, the
6 parties will negotiate in good faith in an attempt to
7 amend this agreement to incorporate such changes as
8 they mutually deem necessary to reflect the change of
9 law." And it also says that they will do that with
10 the intent of preserving the economic bargain before
11 the change of law, to the extent possible.

12 Q. So, Mr. Long, would this type of an amendment to the
13 contract be something that you believe would require
14 Commission review under, I think it was Article 26
15 that we previously discussed?

16 MR. BERSAK: I believe we'll give an
17 answer to that as part of what was the first record
18 request that we will respond to by testimony.

19 MS. AMIDON: Fair enough.

20 BY MS. AMIDON:

21 Q. If the change in law covers -- let's say there's a
22 change in law with respect to the federal investment
23 tax credit, that that lapses, or the value declines,
24 resulting in the loss of federal tax credits. Does

1 this provision require the parties to negotiate in an
2 attempt to amend the agreement to maintain the
3 current economic bargain?

4 A. (Mr. Labrecque) No.

5 Q. Why?

6 A. (Mr. Labrecque) Well, the bargain, the upfront
7 bargain does not involve tax credits. So the
8 specific example you related to would not impact the
9 PPA.

10 Q. Thank you. I have a feeling that my next question
11 will also require a record request. And that -- I'm
12 referring to Article 24. And Article 24.2 states,
13 "It is the intention of the parties that any
14 authority of FERC" -- that's FERC -- "or the NHPUC to
15 change this agreement shall be strictly limited to
16 that authority which applies when the parties have
17 irrevocably waived their right to seek to have FERC
18 or the New Hampshire PUC change any term of this
19 agreement."

20 Does the approval of the Commission of
21 the PPA mean that the Commission is henceforth
22 prevented from exercising its statutory authority or
23 any other provision to modify its orders? And what
24 does -- do you have an answer for that?

1 A. (Mr. Long) Well, you're referring to Section 24.1.
2 It really binds the seller and PSNH to not take
3 action in unilateral filings that would change this
4 agreement. And that's --

5 Q. Well, I was actually looking at 24.2.

6 A. (Mr. Long) And that kind of follows from 24.1. The
7 authority they have, it says limit to that authority
8 applies when the parties have irrevocably waived
9 their rights. I mean, can't say any more than what
10 it says right there.

11 Q. Understanding that this may require a record request,
12 I'd like to ask for an explanation of what this
13 means: Specifically answering the question whether
14 the Commission approval of the PPA, and this section
15 in particular, would preclude the Commission from
16 exercising any statutory authority to modify any
17 orders related to this PPA.

18 MS. AMIDON: Is that okay, Mr.
19 Chairman?

20 MR. CHAIRMAN: Well, Mr. Bersak, is
21 that something that's going to require --

22 MR. BERSAK: It would probably be best
23 done by a --

24 MR. CHAIRMAN: In writing?

1 MR. BERSAK: -- written response.

2 MR. CHAIRMAN: Okay.

3 MR. BERSAK: We shall do so.

4 MR. CHAIRMAN: Well, let's make that,
5 then, I guess, PSNH Exhibit 12.

6 (PSNH Exhibit 12 reserved.)

7 MS. AMIDON: There's another related
8 type of issue, and that is contained in 24.1.2. And
9 Mr. Chairman, I'm just going to say that's probably
10 something that cannot be answered by the witness
11 either. But I think it's an important question. If
12 you look at Article 24.1.2 -- I think that should be
13 24.3.2. It appears on Page 27 -- it talks about
14 public interest standard of review to apply to
15 proposed changes. And it indicates that the parties
16 have waived any rights to an application of any other
17 standard of review, including the just and reasonable
18 standard.

19 I believe it's important for the
20 Commission and for the Staff to understand what
21 that -- why that section is in there and what the
22 implication is for future authority of the Commission
23 to amend any order pertaining to its review and
24 determination on this PPA.

1 MR. CHAIRMAN: Mr. Bersak, is that
2 something you can include in Exhibit 12?

3 MR. BERSAK: Sure. We can do that.

4 MS. AMIDON: Thank you.

5 Just one moment. I'm trying to avoid
6 asking duplicate questions from the other parties.
7 So I'm trying to -- I want to make sure that I have a
8 chance to just sit back for a second. Thank you.

9 (Pause in proceedings)

10 BY MS. AMIDON:

11 Q. Okay. Going back to the right of first refusal.
12 Assuming that the seller agrees to sell the facility
13 to a third party, and PSNH properly exercises its
14 right of first refusal to purchase the facility under
15 the terms and conditions, including the price agreed
16 upon by that party, on completion of the purchase,
17 what happens to the PPA? In other words, does it
18 terminate?

19 A. (Mr. Long) Yes. Essentially, yes.

20 Q. Thank you. And what will PSNH do with the investment
21 in the facility? Would it be added to generation
22 rate base?

23 A. (Mr. Long) That would have to be determined at the
24 time. I mean, this section that you're referring to

1 is simply an option that we put in the contract
2 because we didn't know what the future would be and
3 whether it would be an opportunity somewhere along
4 the line to get more value for customers. It's an
5 option. It doesn't have to be exercised. So it's
6 just something that we could or couldn't do,
7 depending on the circumstances at the time. We can
8 choose to do it or not to do it, depending on the
9 circumstances at the time.

10 Q. I just mentioned the possibility that the Company
11 could add the investment to generation rate base.
12 What alternatives would the Company have at that
13 point?

14 A. (Mr. Long) I think it's unlikely we would buy a plant
15 mid-term, unless there was some advantage like that.
16 Otherwise, it would -- the options are fairly
17 limited. I think it would probably be better to,
18 depending on the circumstances, what the cumulative
19 reduction factor is, just continue to abide by the
20 contract and those terms.

21 Q. If you exercised the right of first refusal, would
22 the Company seek the Commission's approval to add the
23 investment to generation rate base?

24 A. (Mr. Long) I think if we did want to add it to

1 generation rate base, we would have to ask the
2 Commission.

3 Q. Thank you. Please clarify whether your request for
4 relief in this proceeding includes approval for PSNH
5 to exercise the right of first refusal and to
6 purchase the assets without prior review by the
7 Commission of the reasonableness of the purchase
8 decision and the related purchase price.

9 A. (Mr. Long) Our assumption in this contract is that
10 we're a regulated utility. So, you know, to the
11 extent we purchase a plant and want to put it in rate
12 base, you know, I believe, unless my lawyers tell me
13 otherwise, that we would need Commission approval for
14 the rate base.

15 Q. So if it's not clear on the face of it, that's a
16 condition that the Commission could consider?

17 A. (Mr. Long) I don't think it's a condition that's
18 necessary. I think it is part of the normal
19 regulation of a regulated utility.

20 Q. Thank you. One moment.

21 (Pause in proceedings)

22 BY MS. AMIDON:

23 Q. Regarding the right of first refusal, I believe PSNH
24 has a right to assign those rights to an affiliate?

1 A. (Mr. Long) Yes.

2 Q. And assuming the Commission has authority to review
3 and approve such assignment in a future proceeding,
4 how does that comport with Article 16.2.4, where PSNH
5 represents and warrants that, except for the
6 Commission's final decision, there are no other
7 approvals necessary to complete all the transactions
8 contemplated by the PPA?

9 A. (Mr. Long) Let me make sure we're talking about the
10 same scenario. We're talking about end of contract
11 term?

12 Q. Well, we're talking about assigning the right of
13 first refusal.

14 A. Oh, before end of term?

15 Q. Yes.

16 A. That might need a record request also. But the only
17 time we would exercise that is if we thought there
18 was value to the consumers, which means some sort of
19 change in rates, which I assume would involve some
20 sort of a request by PSNH to the Commission.

21 Q. Thank you.

22 MR. CHAIRMAN: Ms. Amidon, is that
23 something you need more on or are looking for more
24 on?

1 MS. AMIDON: If you could give me a
2 moment?

3 (Staff counsel conferring.)

4 MS. AMIDON: Yes, I think that that
5 would -- having a response to that would make this
6 more complete.

7 MR. CHAIRMAN: Mr. Bersak, do you
8 understand what's being asked of you?

9 MR. BERSAK: I'm not sure I have that
10 one fully. So what are you looking for?

11 MS. AMIDON: Well, the question is if
12 PSNH should elect to assign its right of first
13 refusal, and assuming that it has gotten the
14 Commission's authority to do that, how does that
15 assignment reflect with the Article 4.3.1? Oh, I'm
16 sorry. It can't be 4.3.1. It has to be 4.1 --

17 MR. BERSAK: As I understand the
18 question, 'cause maybe our -- is the question --
19 could the question be restated: Is it PSNH's
20 position that it needs or does not need approval from
21 this Commission --

22 MS. AMIDON: I think that's fair to
23 say, yeah.

24 MR. BERSAK: -- to transfer its rights

1 under the right of first refusal?

2 MS. AMIDON: I think that's -- yes,
3 that's a much more elegant way to say it. Thank you.

4 MR. BERSAK: We'll take care of it.

5 MS. AMIDON: Okay.

6 A. (Mr. Long) But for clarification, are you saying
7 prior to the end of term of the contract?

8 MS. AMIDON: Yes.

9 MR. CHAIRMAN: And we'll reserve
10 PSNH 13 for that response.

11 (PSNH Exhibit 13 reserved.)

12 MS. AMIDON: And in connection with
13 that, I need to ask, is it -- in its request for
14 relief, is the Company asking for the Commission to
15 approve its authority to exercise the right of first
16 refusal without any further action by the Commission
17 at a later point in time as to the reasonableness of
18 the price or any other related transfer of
19 conditions? And that's probably the same question,
20 Mr. Bersak.

21 MR. BERSAK: We'll take care of it.
22 Thank you.

23 MS. AMIDON: Thank you.

24 BY MS. AMIDON:

1 Q. And another question, which again I'm not sure,
2 Mr. Long, if you can answer it. But is PSNH's right
3 of first refusal triggered as a result of a sale of
4 NewCo stock, as opposed to the sale of the facility
5 itself -- in other words, the change in ownership?

6 A. (Mr. Long) It would be -- I think it might be a
7 change of ownership.

8 Q. Meaning that the change of ownership would trigger a
9 right of first refusal, a proposed change in
10 ownership?

11 A. (Mr. Long) Yes. Again, I'm reading 7.1.1. And it
12 talks about a sale. Pursuant to a bona fide offer to
13 purchase to or from a third party. So it's a change
14 of ownership caused by a purchase to or from a third
15 party.

16 Q. Thank you.

17 MS. AMIDON: And I'm getting close to
18 the end, Mr. Chairman, just so you know.

19 BY MS. AMIDON:

20 Q. On Page 26 of the rebuttal testimony, you referred to
21 Mr. McCluskey's claim that the Laidlaw project is
22 less risky than other merchant plants. And you list,
23 beginning at Line 17, a number of risks that are
24 identified with bullet items. But don't you agree

1 that the Company, PSNH, is assuming some risk as
2 well?

3 A. (Mr. Long) Not sure what risks you're referring to,
4 because the Company gets no gain from this.

5 MS. AMIDON: I will direct Mr.
6 McCluskey to ask additional questions relative to
7 this particular issue. I have nothing further
8 myself.

9 MR. CHAIRMAN: Well, let me just ask a
10 question, in terms of how much additional.

11 MR. McCLUSKEY: Mr. Chairman, I've got
12 quite extensive cross. And I have to say I didn't
13 think I was going to get on today, so I'm not quite
14 ready. I'd ask for some additional time to do that.
15 I have a few clearer points -- questions from Ms.
16 Amidon's cross that I could do.

17 (Chairman and Commissioners conferring.)

18 MR. CHAIRMAN: Well, I think, given
19 where we are in the day, and given how long our court
20 reporter has been going without a break, I would
21 suggest we break for the day. And I am reading that
22 correctly? It's 4:40? I'd say we recess for the day
23 and pick up tomorrow morning at 9 a.m.

24 I hesitate to say this. Before we

1 recess for the day, are there any issues that we need
2 to address? Mr. Shulock.

3 MR. SHULOCK: I have not resolved all
4 of my concerns with regard to the confidential
5 treatment of the City of Berlin's materials. I still
6 have clients to talk to about that. I'm not able to
7 get the information they requested today, which
8 was --

9 MR. CHAIRMAN: I think you're going to
10 need to speak up. I can barely hear you.

11 MR. SHULOCK: I was not able to get
12 the information which they requested today, which was
13 the name of the exact person who will be reviewing
14 the information. It will take me time to obtain that
15 information.

16 And secondly, they indicated that they
17 want this to take place by mail and not using, you
18 know -- I at least get to use overnight mail. But I
19 can't use modern technology in order to coordinate
20 this effort, which may make things difficult.

21 And then an additional thing that I
22 noticed, based upon the draft protective agreement
23 that they've signed -- or have asked everyone to
24 sign. They are giving Staff, OCA and myself copies

1 of Ventyx reports from 2010. And it appears from the
2 data response which they're trying to get into
3 evidence, and upon which -- and which relies upon
4 this evidence, that they also relied upon Ventyx
5 information from 2009, but they are not providing
6 that. I don't know what's in the packet. It may be
7 in the packet of what they provided to you. But
8 haven't been allowed to see that, and I didn't have
9 time to ask Mr. Boldt before now.

10 MR. CHAIRMAN: Mr. Boldt. Anything on
11 this?

12 MR. BOLDT: The only thing I could
13 say is on the concern on electronic transfer, Mr.
14 Chairman, we're very concerned about the readily
15 available misdirection, lack of control that e-mail
16 has. We can control a paper copy. They can FedEx it
17 out. I made the copies available to both Staff and
18 OCA at the lunch break. I had the same available if
19 Mr. Shulock could have gotten back to us. We're
20 just -- this is the first time he's mentioned that
21 the packet doesn't include what he was expecting it
22 to. So I'll have to ask Mr. Sansoucy what's the
23 situation there. But if there's something that a
24 second copy is -- a second version is supposed to be

1 provided, we will have that tomorrow morning.

2 (Chairman and Commissioners conferring.)

3 MR. CHAIRMAN: Okay. Then I guess on
4 these issues, we'll --

5 MR. BOLDT: We'll continue to work on
6 it, Mr. Chairman.

7 MR. CHAIRMAN: Okay. Anything else
8 before we recess until tomorrow morning?

9 MR. BERSAK: Yes. Mr. Chairman, as
10 promised before lunch, during lunchtime the Company
11 came up with a revision to what's been identified
12 previously as PSNH Exhibit 9, which were changes to
13 the PPA offered by Laidlaw. And I will distribute
14 those to the parties so they have the opportunity to
15 take a look at it. It's what we discussed earlier
16 today and the revisions and clarifications based upon
17 the discussion between the parties. I hope that
18 sometime tomorrow our panel of witnesses will be able
19 to discuss this, and then we'll be available to
20 respond to questions that any of the parties have or
21 that the Commission has regarding these possible
22 changes.

23 MR. CHAIRMAN: Okay. Then we will
24 recess for the day and see you in the morning. Thank

1 you, everyone.

2 (WHEREUPON, Day 2 was adjourned at
3 4:44 p.m..)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public of
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