

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3
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Concord, New Hampshire

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7 RE: DE 11-184
8 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
9 Joint Petition for Approval of Power
Purchase and Sale Agreements and
10 Settlement Agreement.
11 (*Prehearing conference*)12
13 **PRESENT:** Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below14
15 Sandy Deno, Clerk16
17 **APPEARANCES:** Reptg. Public Service Co. of New Hampshire:
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Sarah B. Knowlton, Esq.18
19 Reptg. the Wood-Fired IPPs:
David J. Shulock, Esq. (Olson & Gould)
David K. Wiesner, Esq. (Olson & Gould)20
21 Reptg. Freedom Energy Logistics,
Halifax-American Energy Company and
PNE Energy Supply:
James T. Rodier, Esq.22
23 Reptg. Granite State Hydropower Assn:
Rachel A. Goldwasser, Esq. (Orr & Reno)24
COURT REPORTER: STEVEN E. PATNAUDE, LCR NO. 52

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

Reptg. the Business & Industry Assn:
Michael Licata

Reptg. PUC Staff Advocates:
F. Anne Ross, Esq.
Thomas C. Frantz, Director/Electric Div.

Reptg. Dept. of Resources & Econ. Dev.:
George Bald, Cmsr.

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

Reptg. PUC Staff:
Edward N. Damon, Esq.
Steven E. Mullen, Asst. Dir./Electric Div.
Grant Siwinski, Electric Division
Al-Azad Iqbal, Electric Division

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good afternoon, everyone. I will open the prehearing conference in Docket DE 11-184. On August 23, 2011, Public Service Company of New Hampshire, Bridgewater Power Company, Pinetree Power Company, Pinetree Power-Tamworth, Whitefield Power & Light, and Indeck-Alexandria jointly filed a petition for approval of five power purchase agreements. We issued an order of notice on August 25 setting the prehearing conference for this afternoon.

Among other things, the order of notice indicated that Commissioner Ignatius had disqualified herself from participation in this proceeding. I want to address one preliminary matter with respect to that. In preparation for the prehearing conference, Commissioner Below and I discussed the issue of the disqualification. And, we've determined to make application to the Governor, pursuant to RSA 363:20 for a Special Commissioner to sit on this case. With respect to that issue, our intention is to forward a letter as soon as we can. But I think that letter would be better informed if there is a decision with respect to what the procedural schedule will be. I'll note for the record in this case, there are -- I haven't seen a particular request from the parties, there

1 are a number of public comments that have been filed
2 urging expedited approval. So, when we go around the room
3 hearing the positions of parties, with respect to the
4 normal brief statement about their position, we'd also ask
5 if there's any recommendation or agreement with respect to
6 a procedural schedule. If there is something now that we
7 can get on the record, that's great. Or, if it's a matter
8 of something that would emerge from the technical session,
9 then we'll deal with it that way. But I just think that
10 the letter asking for a Special Commissioner would be more
11 useful to the Governor and Council if there was an actual
12 recitation of what the procedural schedule might be in
13 this case. So, --

14 CMSR. BELOW: And, I would note that I
15 concur with the Chair's point that we make an application
16 for a Special Commissioner.

17 CHAIRMAN GETZ: I also note for the
18 record that we have the affidavit of publication that has
19 been filed. And, my record indicates that we have the
20 OCA's notice of participation; we have petitions to
21 intervene from -- one petition from Freedom Logistics --
22 Freedom Energy Logistics, Halifax American Energy Company
23 and PNE Energy Supply, a petition from Granite State
24 Hydropower Association, and one as well from Business &

1 Industry Association. So, to the extent that the
2 Petitioners, when they're speaking to their position, want
3 to state their position with respect to those petitions to
4 intervene, that would be useful as well.

5 And, I also note, to the extent that
6 there is anyone who seeks to make a public comment today,
7 what we will do is we'll hear from the Petitioners, then
8 we'll hear from parties who have made a petition to
9 intervene, then we will hear any public comment that
10 anyone would like to make. And, then, we'll give the
11 Petitioners the opportunity to speak last, which is
12 consistent with our rules.

13 So, I think that covers all of the
14 introductory matters. And, we'll turn to Mr. Bersak.

15 MR. BERSAK: Good afternoon, Chairman
16 Getz and Commissioner Below. Did you want to take
17 appearances or do you want to just go right into opening
18 statements?

19 CHAIRMAN GETZ: Well, make your
20 appearance and then give us everything you got.

21 MR. BERSAK: Excellent. On behalf of
22 Public Service Company of New Hampshire, you have myself,
23 Robert A. Bersak, and Sarah Knowlton, representing the
24 Company here today. As you are aware, this docket

1 involves a follow-on to the proceedings we had in Docket
2 Number 10-195, the proceeding relating to the construction
3 and approval of a PPA for a new wood-fired generating
4 station up in Berlin, New Hampshire, the so-called "Berlin
5 Station".

6 The Commission is aware that its orders
7 from that proceeding were under appeal to the Supreme
8 Court of New Hampshire, and that those appeals were
9 blocking the ability of the developers of Berlin Station
10 to receive their financing. It turns out to be in the
11 public interest of the state, as espoused by the Governor,
12 by the Commissioner of the Department of Resources and
13 Economic Development, by the entirety of the Executive
14 Council and numerous legislators that the state really
15 needs both the new station up in Berlin, the construction
16 jobs, the taxes, the jobs, you know, in the forestry
17 industry, as well as jobs in the existing wood-fired IPPs,
18 to further the public policies and interests of the state.

19 We were asked to come together to try to
20 determine whether there's a way to make all of that a
21 reality. As a result of negotiations that were chaired
22 and spurred on by the Governor, and all those other
23 members of the state that I had listed, we were able to
24 come up with a series of agreements that would allow the

1 development of the plant up in Berlin, would eliminate the
2 appeal that was pending before the New Hampshire Supreme
3 Court, and that would allow the existing wood IPPs to
4 continue to operate for a period of time.

5 We've presented to the Commission five
6 power purchase agreements that Public Service Company of
7 New Hampshire and five of the wood IPPs have entered into,
8 and those agreements are subject to the approval of this
9 Commission, both as to the substance of those agreements,
10 as well as to an ancillary Settlement Agreement and a
11 ratemaking treatment as to how the costs of these deals
12 would be accounted for and recovered by Public Service of
13 New Hampshire.

14 We did file yesterday a follow-on
15 pleading, which indicates that there were two conditions
16 that were expressed in the Joint Petition that were
17 precedent to the deals being and taking fruition. One, of
18 course, is this Commission's approval of what we filed.
19 But another condition was that the Berlin Station
20 development actually reach a financial closing by a date
21 certain, and that that closing had to include the funding
22 of almost \$3 million in New Market Tax Credits that would
23 benefit Coos County and the City of Berlin.

24 Well, we announced yesterday that that

1 financial closing has indeed occurred, that that financial
2 condition to the effectiveness of the PPAs has been met,
3 and that the millions of dollars in credits to the North
4 Country have, in fact, been funded. So, we're very happy
5 to report that. So, that's not anything that has to be
6 considered any more by the Commission, because that
7 condition has been met.

8 With respect to the terms of the PPAs,
9 they're relatively short-term PPAs, but they are over 12
10 months in duration. They are very simple. They require
11 Public Service Company of New Hampshire to buy certain
12 amounts of energy for certain periods of time. We do not
13 buy the capacity from the plants, we do not buy any
14 environmental attributes, such as renewable energy
15 certificates. These are energy-only deals.

16 The Settlement Agreement that we ask the
17 Commission to approve would have Public Service waive
18 certain claims or ability to bring claims that are related
19 to the prior docket, 10-195, and to the process that led
20 up to these particular power purchase agreements. And,
21 the ratemaking treatment that we've asked for is one that
22 would make sure that, by entering into these arrangements,
23 at the behest of the Governor and the other dignitaries in
24 the state, that we do not wind up adversely impacting our

1 Energy Service rate. So, we've asked for the ability to
2 transfer certain costs from our Energy Service rate to
3 make room for the costs of these deals, such that the
4 Energy Service rate is held harmless, but we are able to
5 recover all the costs that these deals would incur.

6 Public Service has no objection to the
7 participation by any of the -- either of the parties that
8 have filed petitions for intervention. And, with respect
9 to a schedule, the parties have kind of discussed a
10 schedule that was proposed by the wood IPPs. So, I will
11 defer to them to discuss scheduling matters with you.
12 Thank you.

13 CHAIRMAN GETZ: Thank you. And, I'm
14 sorry, any position on the petitions to intervene?

15 MR. BERSAK: Yes. I said that we have
16 no objections to them.

17 CHAIRMAN GETZ: No objection to any of
18 them. Okay. Great. Thank you. Well, I neglected to
19 point out in my summary of the order of notice that the
20 filing is also supported by the New Hampshire Department
21 of Resources and Economic Development, and certain members
22 of Commission Staff, and specifically that our General
23 Counsel, Anne Ross, and the Director of our Electric
24 Division, Tom Frantz, have been designated as "Staff

1 advocates".

2 So, with that, turn to Ms. Ross or
3 Commissioner Bald?

4 MS. ROSS: Good morning -- or, good
5 afternoon, Commissioners. I'm Anne Ross. I am appearing
6 on behalf of the designated Staff advocates, that is
7 myself and Tom Frantz. We are comfortable with the
8 statement that PSNH has made that describes our position
9 on the Joint Petition, as summarized in Mr. Frantz's
10 testimony.

11 Oh. And, with regard to the expedited
12 treatment, we do request expedited treatment of this
13 docket. It's fairly time-sensitive. Some of the purchase
14 power agreements erode as the decision is delayed. So, to
15 bring the full benefits of the Settlement to the parties,
16 the sooner we can reach a resolution on the proposal the
17 better.

18 The schedule that was proposed, that has
19 been proposed by the Wood IPPs is fine with the Staff
20 Advocates. And, we have no objections to any of the
21 requests for intervention.

22 CHAIRMAN GETZ: Thank you. Commissioner
23 Bald.

24 CMSR. BALD: Thank you, Mr. Chairman.

1 My name is George Bald, Commissioner of the Department of
2 Resources and Economic Development. Anne did such a
3 wonderful job, I just would agree with everything that she
4 just said.

5 CHAIRMAN GETZ: Thank you. Mr. Shulock.

6 MR. SHULOCK: Commissioner, my name is
7 David Shulock. And, I have with me David Wiesner. We're
8 both from the firm of Olson & Gould, here in Concord.
9 And, we represent the six wood IPPs. That would be
10 Bridgewater Power Company, LP, Pinetree Power, Inc.,
11 Pinetree Power-Tamworth, Inc., Springfield Power, LLC, DG
12 Whitefield, LLC, and Indeck-Alexandria, LLC. And, we're,
13 of course, here to ask the Commission to approve the PPAs
14 and the cost recovery mechanism proposed by PSNH, and to
15 request expedited treatment for this case. We have no
16 objection to any of the requests for intervention in the
17 case.

18 And, then, in terms of the procedural
19 schedule, what we have passed around to the parties is a
20 schedule that commences on Monday with recovery and ends
21 with hearings the week of November 28th.

22 CHAIRMAN GETZ: Is there a copy that we
23 can --

24 MR. SHULOCK: Yes, I have that here.

1 Not all of the parties have agreed to that schedule,
2 however.

3 CHAIRMAN GETZ: We'll give them an
4 opportunity to respond. I just want to get a chance to
5 see what the subsidiary dates are. Thank you.

6 Is there anything further, Mr. Shulock?

7 MR. SHULOCK: No. Thank you.

8 CHAIRMAN GETZ: Thank you. Mr. Rodier.

9 MR. RODIER: Thank you, Mr. Chairman. I
10 represent Freedom Logistics, Halifax American Energy
11 Company, and PNE Power Supply. Just a little bit of a
12 brief background here, even though there hasn't been any
13 interventions [objections?], you still have to make a
14 decision. So, I just want to mention all three of these
15 are entities that are controlled by August Fromuth, who,
16 as the Commission may be aware, until recently was Vice
17 Chairman of NEPOOL and the Chairman of the End Users Group
18 at NEPOOL. These are his companies.

19 The Freedom entity manages the
20 relationship of large end users with ISO-New England.
21 Those that do not have a competitive supplier, they go
22 straight to the wholesale market to buy their power. For
23 example, the Union Leader and St. Anselms College would be
24 two of those clients.

1 Halifax American Energy Company, as the
2 Commission may be aware, works with South Jersey Energy
3 Company, that's a retail supplier. A couple of the
4 clients there would be Stonyfield Farm and University of
5 Southern New Hampshire, to name a few. The Halifax
6 entity, Halifax, HAEC/SJE, South Jersey, were just, as the
7 Commission may be aware, were just awarded the contract to
8 sell power to the State and the City of Concord. And the
9 --

10 (Court reporter interruption)

11 MR. RODIER: I think I said HAEC/SJE
12 were recently awarded the contract to sell -- the electric
13 contract to sell to the State and the City of Concord.
14 The power is coming from Concord Power & Steam. And, the
15 Freedom entity is going to manage that.

16 PNE recently received its financing. I
17 think we're going to imminently get our license from the
18 Commission to sell electricity there. The intention is to
19 sell to Public Service's retail customers starting on
20 January 1st, when the rates we expect are going to take a
21 significant leap upward on January 1st. The interest --
22 so, there are some substantial interests here at stake.

23 But I just want to go over PNE real
24 quick. You know, PNE, when the Commission's decision in

1 10-160 comes out and says "no, we're not going to move
2 costs and dollars from the Energy Service rate and put it
3 on the wires", that was a big boost for PNE to get its
4 financing. Then, the first thing that we see is the
5 request to move costs from the Energy Service rate to the
6 wires, which is very concerning as to what this, you know,
7 could potentially lead to.

8 So, my only thought was that, first of
9 all, I'm in favor of an expedited proceeding. Based on my
10 own experience, I know pretty well what the -- what the
11 wood-fired guys had to go through to get this deal from
12 Public Service. I think they deserve to be commended.
13 And, I think they -- I would like to see if they could get
14 an expeditious approval so they can start getting the
15 funds that they need to stay alive.

16 However, with respect to the other key
17 issue here, the moving of the so-called "bypassable --
18 "nonbypassable charge" that's created here, at a minimum,
19 I think it should be without prejudice or without
20 precedent to anything in other Commission proceedings. It
21 should last only as long as necessary, you know, to carry
22 out these agreements. And, it should not in any way, I'd
23 like the Commission to explicitly say it's not to be in
24 derogation in any way of their order in the 10-160

1 customer migration docket. So, I think that would satisfy
2 our concerns and issues.

3 Just to conclude, the entities I
4 represent have substantial interests that could be
5 impacted here. That's (a). And, (b), the Commission can
6 also, of course, decide to allow somebody to intervene
7 just if it's in the public interest. So, on that basis,
8 you know, I would ask that you allow these interventions
9 and consider, you know, the comments that I've made.
10 Thank you very much.

11 CHAIRMAN GETZ: And, just want to
12 clarify, though, with respect to the substantive position,
13 your issues are more about the issues of rate recovery and
14 less about the terms of the agreements themselves?

15 MR. RODIER: We have no interest in
16 meddling with the agreements themselves. It's all about
17 what, you know, there's going to be a filing coming in,
18 Mr. Chairman, in about three weeks to set the rate for
19 next year for the Energy Service rate. What are we going
20 to see? You know, what could this lead to? That's the
21 only issue.

22 CHAIRMAN GETZ: All right. Thank you.
23 Ms. Goldwasser.

24 MS. GOLDWASSER: Mr. Chairman,

1 Commissioner Below, my name is Rachel Goldwasser. I work
2 for the law firm of Orr & Reno. I am here on behalf of
3 Granite State Hydropower Association, which is a
4 membership organization representing approximately 45
5 small hydropower projects located in New Hampshire. We
6 submitted a motion for intervention.

7 I'll start with the substance. On the
8 substance, we take no position on the merits. And, we
9 have no objection to the schedule that's been proposed.

10 As you know -- and, we also don't object
11 to the request for confidential treatment or the concerns
12 for confidential treatment with respect to the agreements
13 as they're proposed.

14 Granite State Hydropower Association's
15 members have interest in the market for purchase and sale
16 agreements between independent power producers and
17 load-serving entities, and in the competitive market for
18 energy in New Hampshire. And, for those reasons, we
19 request intervenor status today.

20 CHAIRMAN GETZ: Okay. Thank you.

21 Mr. Licata.

22 MR. LICATA: Thank you, Mr. Chairman,
23 Commissioner Below. My name is Mike Licata. I'm here on
24 behalf of the Business & Industry Association. The BIA is

1 a not-for-profit business association, which advocates on
2 behalf of business interests within the State of New
3 Hampshire. Our membership is comprised of over 400
4 businesses, representing a broad cross-section of the
5 commercial and industrial community in New Hampshire.

6 Today, at this point, we do not have an
7 official position on the merits of the proposed docket.
8 We are requesting intervention, intervenor status, so that
9 we can closely monitor the proceedings and provide input,
10 if we feel compelled to do so at a later date, when we
11 might have a more formal position.

12 And, of particular interest to our
13 membership is the concept of shifting the above-market
14 costs of these proposed contracts onto the distribution
15 rate, as opposed to the Energy Service rate.

16 CHAIRMAN GETZ: Thank you.

17 MR. LICATA: Thank you. Ms. Hatfield.

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

19 Good afternoon, Commissioners. My name is Meredith
20 Hatfield. And, I'm here on behalf of the Office of
21 Consumer Advocate. And, our office represents the
22 interests of residential ratepayers. With me from the
23 office is Steve Eckberg.

24 Our office does not have a position at

1 this point in the proceeding. We are still reviewing the
2 filing, and intend to engage in discovery. We have
3 received a copy late yesterday of the wood IPPs' schedule.
4 And, while we certainly will cooperate in efforts to make
5 this as an expedited schedule, it is a very tight
6 schedule, especially in light of the significant legal and
7 financial issues in this case.

8 With respect to interventions, we have
9 no objections. And, with respect to the Motion for
10 Confidential Treatment, we aren't prepared to give you our
11 position at this time. But we would just note that we
12 will be reviewing it in light of the Commission's decision
13 in DE 10-195, where the Commission made public all of the
14 terms of the PPA between PSNH and what is now called the
15 "Berlin Station". So, I would just note that for the
16 Commission. Thank you.

17 CHAIRMAN GETZ: Thank you. Mr. Damon.

18 MR. DAMON: Thank you, Mr. Chairman. My
19 name is Edward Damon. And, with me this afternoon are
20 Steven Mullen, Grant Siwinski, and Al-Azad Iqbal. We
21 represent what we call the "Non-Advocate Staff", to use
22 the same nomenclature that was used in the FairPoint
23 reorganization docket last year. Non-Advocate Staff has
24 already, on August 25th, issued a first set of data

1 requests to the parties, and those have all been responded
2 to. We intend to do further discovery as well. And, we,
3 as always, will carefully review the facts and develop the
4 facts and so forth as usual.

5 We have been provided with a procedural
6 schedule, which I presume is the same as the one that
7 Mr. Shulock presented to you. The only possible addition
8 that Staff would suggest regarding that is that there is
9 no space on the schedule for a technical session. But, in
10 talking with Mr. Shulock this morning, he is cooperative
11 and agreeable, I believe, to holding a technical session,
12 if, you know, that would be deemed necessary and helpful
13 to develop the facts and speed this process along.

14 CHAIRMAN GETZ: Thank you. Okay. With
15 respect to the petitions to intervene, we will grant all
16 of the petitions to intervene, finding that it's in the
17 interest of justice to do so.

18 So, at this point then, it's opportunity
19 for public comment. Is there anyone who would like to
20 speak to the filing? Representative Garrity.

21 REP. GARRITY: Thank you, Mr. Chairman,
22 and thank you, Commissioner Below. My name is
23 Representative Jim Garrity, from Atkinson. I'm the
24 Chairman of the House Science, Technology and Energy

1 Committee. And, I'm here as a public policy maker in the
2 energy use base to oppose this agreement. Should I make
3 my comments now?

4 CHAIRMAN GETZ: Please.

5 REP. GARRITY: Okay. Thanks. I oppose
6 the agreement because it runs counter to the legislative
7 intent of electric restructuring, which was to lower end
8 use electric rates through increased competition, RSA
9 374-F:1, I, Purpose statement, and I'll quote: "The most
10 compelling reason to restructure the New Hampshire
11 electric utility industry is to reduce costs for all
12 consumers of electricity by harnessing the power of
13 competitive markets."

14 This agreement is a political issue, not
15 a power issue. And, it is not in the public interest. It
16 asks for a nonbypassable charge that could amount to
17 \$20 million over the term of the agreements. The
18 Commission just rejected a nonbypassable charge last month
19 in Docket DE 10-160, the PSNH customer migration docket.
20 It's not in the public interest of ratepayers, who I care
21 very much about, to have to subsidize above-market costs,
22 when PSNH can purchase power for less in the competitive
23 market. It punishes ratepayers who have already migrated
24 away from PSNH by forcing them to pay this nonbypassable

1 charge. It's unfair to other merchant competitors in the
2 power market, who do not have the advantage of special
3 political deals. And, it's unfair to every other business
4 in New Hampshire, who do not have the advantage of
5 powerful politicians cutting special deals for them.

6 So, for all of those reasons, I would
7 ask you to reject this, this agreement.

8 CHAIRMAN GETZ: Thank you. Anyone else
9 who would like to make a public comment? Okay. Then,
10 we'll -- sir?

11 SEN. FORRESTER: Good afternoon,
12 Commissioners. My name is Jeanie Forrester. I am the
13 Senator from District 2.

14 CHAIRMAN GETZ: Good afternoon, Senator.

15 SEN. FORRESTER: And, I support this,
16 these power purchase agreements that PSNH has worked out
17 with the IPPs. I would urge you to expedite this and
18 approve it. I was fortunate enough to be in the room as
19 these negotiations were going on. And, from my
20 perspective, we've got a real problem in this state right
21 now with jobs and the economy. This will help the IPPs
22 and ensure that jobs stay in the North Country. And, so,
23 I ask you to expedite this.

24 CHAIRMAN GETZ: Thank you. Is there

1 anyone else? Sir.

2 MR. COURCHESNE: Commissioners, good
3 afternoon. My name is Christophe Courchesne. I'm a Staff
4 Attorney with the Conservation Law Foundation. And, while
5 we have taken no position and are still evaluating the
6 filings in this matter, we want to state for the record
7 that we support renewable energy PPAs as a mechanism to
8 promote development of renewable energy and support of
9 renewable energy in New Hampshire. However, we share many
10 of the concerns that have been voiced thus far regarding
11 the nonbypassable charge, and we're continuing to evaluate
12 the filings.

13 CHAIRMAN GETZ: Okay. Thank you.
14 Anyone else?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. Hearing nothing,
17 then it's an opportunity for the Petitioners to respond to
18 anything they have heard. But one issue I would like to
19 raise for the Petitioners with respect to the procedural
20 schedule. This procedural schedule provides for rebuttal
21 testimony. And, I guess my question is, whether that's
22 necessary? And, if it turns out that it's not necessary,
23 would it be possible to have the hearing earlier or to
24 provide a backup plan for having the hearing earlier, if

1 indeed there is no rebuttal? So, any thoughts on anything
2 else that's been said after the last time you spoke and
3 any response to that question.

4 MR. BERSAK: Well, thank you, Mr.
5 Chairman. With respect to the schedule, Public Service
6 will be very flexible. We'll work with the parties and
7 the Commission to try to move this proceeding along as
8 rapidly as possible. If it turns out there is no need to
9 rebut, then we won't rebut, and we can move the hearing to
10 an earlier date. There will be a tech session afterwards,
11 where we can meet with the now -- the parties that have
12 now been granted intervenor status, to make sure we're all
13 on the same page with respect to a schedule, and we can
14 present that to you immediately after the tech schedule
15 has ended -- or, I mean, the tech session has ended.

16 Just one other procedural matter is
17 that, as Mr. Damon indicated, that discovery has already
18 started, and that the Company and others have already
19 responded to certain discovery questions. Some of those
20 responses were responded to and they included confidential
21 information. Pursuant to the Commission's rules, we
22 provided the information and indicated we were going to
23 file a Motion for Confidential Treatment at or before this
24 proceeding. Since the issue of confidentiality is the

1 exact, you know, involve the exact same material and the
2 same issues that are contained in the Wood IPPs' Motion
3 for Confidential Treatment that's already pending before
4 the Commission, we didn't feel it was necessary to file
5 repetitive motions. So, we'd just like to note that our
6 confidential responses to discovery would be governed by
7 however the Commission rules on the outstanding Motion for
8 Confidential Treatment that was filed on the 23rd of
9 August.

10 CHAIRMAN GETZ: Thank you. Ms. Ross.

11 CMSR. BELOW: Wait a second. Could you
12 clarify that a bit? Are you saying that, to the extent
13 you've responded to discovery requests that you may seek
14 confidential treatment for, you sort of want to add those
15 to the currently pending motion?

16 MR. BERSAK: As a matter -- there was
17 only one question that PSNH responded to, and the
18 materials included in the response were the exact same
19 confidential information that had been redacted from the
20 PPAs that are pending before the Commission. So, to the
21 extent that the Commission finds that it is, in fact,
22 going to grant --

23 CHAIRMAN GETZ: Substantively the same
24 information, but residing in a different document?

1 MR. BERSAK: Exactly. You got it.

2 That's it.

3 CHAIRMAN GETZ: Ms. Ross -- oh, did you
4 have --

5 CMSR. BELOW: No, that clarifies it.

6 MS. ROSS: I don't think, at this point,
7 that Staff Advocates have anything to add. And, with
8 regard to rebuttal testimony, I doubt that we're going to
9 have to have rebuttal testimony. There may be a need to
10 brief some of the issues, because some of the ratemaking
11 issues might be considered legal issues. But that could
12 certainly be handled within the current schedule. And, I
13 think that's all I need to address right now.

14 With regard to confidentiality, we will
15 allow the Wood IPPs to promote their request for
16 confidential treatment, and ask that the information that
17 is derived from that request and is contained in Mr.
18 Frantz's testimony be treated however the Commission
19 determines is appropriate with regard to the underlying
20 motion by the Woods. So, we won't make a separate motion.
21 We'll rely on their arguments.

22 CHAIRMAN GETZ: Okay. Thank you.
23 Commissioner Bald.

24 CMSR. BALD: I don't have anything to

1 add, Mr. Chair.

2 CHAIRMAN GETZ: Thank you. Mr. Shulock.

3 MR. SHULOCK: With regard to the
4 procedural schedule, we would be happy if the hearings
5 were held earlier, and we'll be flexible in that regard to
6 help set up a schedule that accomplishes that, if
7 possible.

8 CHAIRMAN GETZ: Well, I guess my
9 thinking on this basically is this. You know, if the
10 parties are seeking expedited treatment, if they want to
11 waive rebuttal testimony, then that would certainly be
12 something we would consider.

13 MR. SHULOCK: And, with regard to
14 confidentiality, we filed a paper motion, and we would
15 rely on the arguments that we made in that motion. And,
16 we have no objections to the oral motions that were made
17 by PSNH and Staff to include their discovery responses
18 under the umbrella of that motion.

19 In addition, we have answered some
20 interrogatories for which -- or, I'm sorry, data requests
21 for which we have claimed confidential treatment. These
22 also contain commercial financial information and
23 information about other agreements that are not before the
24 Commission. And, we would like to include those, too, if

1 there are no objections, so that it's all resolved up
2 front. And, if a motion for rehearing needs to be filed,
3 it could be filed early.

4 The one thing that we don't have, that
5 hasn't been submitted to you, are copies of those data
6 requests. They have been submitted to your Staff. And,
7 I'm just wondering whether we need to provide copies of
8 those data requests to you so that you can rule?

9 CHAIRMAN GETZ: Well, certainly, to make
10 a ruling on --

11 MR. SHULOCK: Okay.

12 CHAIRMAN GETZ: -- on what information
13 should be protected --

14 MR. SHULOCK: Sometimes a description of
15 what is contained in them suffices under the rules. It's
16 just a question of whether you actually want to see them.
17 I'm happy to provide them later today.

18 And, then, with regard to judging this
19 case under the same light as the Laidlaw case was, these
20 agreements are significantly different from the Laidlaw
21 agreement, especially in terms of the term of that
22 agreement. One of the reasons why it was not as harmful
23 to release admittedly confidential and proprietary
24 information in which that company had a privacy interest

1 was because the term of that agreement was so long. And,
2 it was unlikely that that party would be back out in the
3 market negotiating another agreement any time soon. And,
4 so, that party's competitive position was not as harmed by
5 the publication of that information as it would be in this
6 case. Because these contracts are much shorter, and these
7 facilities will be back out in the market looking for
8 agreements almost immediately. So, a publication of that
9 information now would be very harmful to that competitive
10 interest.

11 And, I can't speak for PSNH, but what
12 they're going to agree to in the short term may be quite
13 different from what they might agree to in the long term,
14 in terms of the publication of that type of financial deal
15 information.

16 So, I, for one, see a great difference
17 between this case and the Laidlaw case, based on just the
18 duration of the term.

19 CHAIRMAN GETZ: Okay. Thank you. Well,
20 let me give the opportunity for anyone else who wants to
21 speak to two things, either the issues of confidentiality
22 and/or the procedural schedule. But, I think, based on
23 what I've heard, and certainly we're going to have to take
24 under advisement the issue of the Motion for

1 Confidentiality. And, to the extent you want to discuss
2 that, those issues further in the tech session, and, if
3 there's agreement or disagreement I think that would
4 clarify what's gone on this afternoon, that would helpful.

5 MR. SHULOCK: If I may? When we filed
6 that Motion for Confidential Treatment, there were not any
7 intervenors in the case. We now know that there are
8 competitors who are part of this proceeding. And, we
9 would ask that the information be kept private from them
10 as well, unless they have an objection to that. And, we
11 might have to work something out.

12 CHAIRMAN GETZ: Well, I'd ask the
13 parties to address that in the tech session.

14 MR. RODIER: Who's he referring to, Mr.
15 Chairman? Is it me or her?

16 (Multiple parties speaking at the same
17 time.)

18 CHAIRMAN GETZ: Well, let's -- wait.
19 Let's --

20 MR. RODIER: Sorry.

21 CHAIRMAN GETZ: Cross talk doesn't, --

22 MR. RODIER: I apologize.

23 CHAIRMAN GETZ: -- especially from the
24 back of the room, doesn't help our court stenographer put

1 together his usual transcript, usual excellent transcript.

2 MR. RODIER: I apologize.

3 CHAIRMAN GETZ: So, do you have a
4 statement, Mr. Rodier, about this or is this something
5 that can be addressed in the tech session?

6 MR. RODIER: No. I should have never
7 said anything in the first place. I'm sorry.

8 CHAIRMAN GETZ: So, anything else about
9 confidentiality or scheduling?

10 MR. RODIER: No.

11 CHAIRMAN GETZ: Ms. Hatfield, did you
12 have something?

13 MS. HATFIELD: Yes. Thank you, Mr.
14 Chairman. I'm willing to discuss this at the tech
15 session, but I just did want -- I don't want to waive my
16 ability to raise this later. That I think it is a little
17 problematic to file one Motion for Confidentiality, and
18 then want it to be an umbrella and have other things come
19 in under it. So, I think there is probably a way that we
20 can very clearly identify what comes under it. But I just
21 wanted to raise that, because it just -- it seems like
22 it's less than clear what would be covered under that
23 request.

24 CHAIRMAN GETZ: All right. Anything

1 further? Mr. Damon.

2 MR. DAMON: Yes. Just one comment
3 relative to the confidentiality. The motion that's been
4 filed refers to information in the power purchase
5 agreements and portions of Exhibit B to the Settlement
6 Agreement. I think it is true, as Mr. Shulock pointed
7 out, that there are a couple of other pieces of
8 information in response to Staff's data requests that do
9 not fall within the description that I've just read. So
10 that I think for that information, or information that's
11 not described or derived from the information in here,
12 there probably should be a separate motion filed.

13 CHAIRMAN GETZ: All right. Well, let me
14 return to this issue then and the Motion for
15 Confidentiality. I ask that the parties see if you can
16 come to a meeting of the minds about that, and let us know
17 something in writing about this, if there's a joint
18 recommendation. I think separately what I -- and I assume
19 that may take a little while to put that together, but
20 separately I'm interested in, out of the tech session, if
21 there's an agreement on the procedural schedule, I would
22 just ask Mr. Damon that you communicate that to us in
23 writing as soon as you can, because I'd like to make that
24 information part of the application to the Governor and

1 Council with respect to a Special Commissioner.

2 So, is there anything further to address
3 this afternoon?

4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Hearing nothing,
6 then we'll close the prehearing conference and take the
7 matters under advisement. Thank you, everyone.

8 MR. BERSAK: Thank you.

9 **(Whereupon the prehearing conference**
10 **ended at 2:44 p.m., and a technical**
11 **session was held thereafter.)**

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