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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 9, 2011 - 9:16 a.m.
Concord, New Hampshire

DAY 6

NHPUC FEB21 '11 PM12:52

RE: DE 10-195
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 New Hampshire:
Robert A. Bersak, Esq.

Reptg. the 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 & Indeck Energy-Alexandria:
David J. Shulock, Esq. (Brown, Olson & Gould)

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

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

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

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

Reptg. PUC Staff:
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Edward N. Damon, Esq.
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George R. McCluskey, Electric Division

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1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll resume the hearing in DE 10-195. We were
4 still working our way through Mr. Bersak's
5 cross-examination of the panel. But I understand
6 correctly that there's someone who would like to make a
7 public comment? Sir.

8 MR. DAMMANN: Good morning. My name is
9 James Dammann. With me is my partner, Robert Berti.
10 We're licensed foresters in the State of New Hampshire.
11 We're co-owners of North Country Procurement, a business
12 -- we've been in business for 25 years. We have 70 years
13 of experience in forestry and procurement combined. NCP
14 services nine wood plants all around New England,
15 responsible for the delivery of 1.3 million tons, from
16 some 250 wood suppliers. Four of our clients, well,
17 actually, now three, are intervenors in this docket.
18 Concord Steam, with Concord Steam withdrawing, we had
19 submitted written testimony, and that testimony was not
20 heard. We want the Commission to understand the impact
21 this PPA could have on the wood markets, and specifically
22 the wood IPPs.

23 There's one aspect of wood procurement
24 that we would like to make sure you understand. Wood is a

1 distinctly dispersed resource. The greater the demand for
2 wood, the further one must reach to get the fuel. Thus,
3 the larger the facility, the greater will be the cost of
4 wood to a particular facility, all else being equal.
5 Thus, one would expect Concord Steam's cost of wood to be
6 below the wood IPPs', and the wood IPPs' cost of wood to
7 be below Schiller and potentially Laidlaw's, everything
8 else being equal.

9 The Laidlaw PPA shifts 100 percent of
10 the fuel risk onto ratepayers because of the Wood Price
11 Adjustment clause. PSNH implies there is protection for
12 ratepayers, because they control the price at Schiller,
13 but that's not the case. All the factors that affect the
14 market for wood, including diesel fuel prices, pulpwood
15 markets, firewood markets, pellets, and, in particular,
16 the weather affect all plants, including Schiller. In
17 fact, since Schiller is such a large plant, and half of
18 its wood procurement area is in the Atlantic Ocean,
19 Schiller consistently pays more for its wood than any
20 other plant because of its size and location.

21 Yesterday, I was here and I heard
22 Mr. Bersak show that Concord Steam's historical wood price
23 in the 2004 to 2010 period was comparatively very low
24 compared to Schiller, and, he argued, this indicates that

1 Laidlaw's energy price could be much lower than is
2 projected by Staff and others. The reason Concord Steam's
3 wood price is so low is it is a comparatively very small
4 facility, using only 10 percent or even less than
5 10 percent of the wood that Schiller uses annually. It is
6 the nature of the wood business that Concord Steam's wood
7 cost should be significantly lower than Schiller's, due to
8 the small size of Concord Steam.

9 PSNH says they are paying \$27 a ton for
10 wood. I want to make the Commission aware that they are
11 being somewhat misleading. They're paying between \$27 and
12 \$29 per ton for wood, the majority of their wood,
13 depending on the distance the wood is coming from. Above
14 40 miles, they're paying \$28 for wood, and, above 80 miles
15 away, they're paying \$29 for wood. The majority of their
16 wood is being -- they're paying \$28 plus, because the
17 majority, to the best of my knowledge, is coming from
18 outside of 40 miles. These prices went into effect on
19 January 17th of this year, one day before PSNH submitted
20 their rebuttal testimony in this docket. For the three
21 years before January 17th of this year, they paid an
22 average of \$34 a ton for their wood. In fact, Schiller is
23 now having some difficulty attracting enough wood at the
24 \$27 to \$29 a ton price. So much so, they have begun

1 opening Saturdays in order to get wood -- an adequate
2 supply of wood to the plant. We believe the past four
3 year average of \$34 per ton is the best indicator of the
4 price of wood at Schiller upon which Laidlaw's power price
5 should be assessed.

6 When Schiller entered the market in
7 2006, the market price for wood rose between 12 and
8 15 percent. This is a natural occurrence, as a major new
9 demand for wood enters the market, the price will rise,
10 until the supply infrastructure grows enough to meet the
11 new demand. In the case of Laidlaw, we project the market
12 price would rise again by at least 15 percent. Laidlaw's
13 testimony at the SEC stated that they will reach at least
14 100 miles out for their fuel. That means they will reach
15 south as far as Rochester, New Hampshire. Schiller now
16 reaches north as far as Conway for some of their fuel. We
17 know this, because we compete with it. Thus, Laidlaw will
18 compete directly with the other IPPs and with Schiller in
19 a wide area of the middle of the state. Laidlaw's
20 entrance into the market will cause Schiller's wood price
21 to rise, resulting in more expensive power coming out of
22 Laidlaw.

23 The Wood Price Adjustment clause in the
24 PPA is distinctly anti-competitive. It's anti-competitive

1 because at some point wood prices will escalate for any
2 number of reasons. Rising wood prices will affect all
3 plants, including Schiller. Schiller can pass those costs
4 onto ratepayers, and Laidlaw can pay more for their wood,
5 because their revenue will increase when Schiller pays
6 more for its wood. The existing IPPs have no way to pass
7 along increased wood costs, and thus will be unable to
8 compete.

9 The existing wood IPPs can produce power
10 considerably cheaper than Laidlaw, basically because
11 they're smaller facilities and they don't need to reach
12 out nearly as far for their wood.

13 And, finally, approving this PPA as
14 filed will put the existing wood IPPs under even more
15 financial stress, as their wood costs will go up should
16 Laidlaw be built. It does not make sense to jeopardize 90
17 megawatts of dispersed wood power located in six different
18 municipalities, which can produce power cheaper, with one
19 huge 70 megawatt plant whose power is more expensive.
20 Each of these six plants employees 120 people directly and
21 indirectly. That would be 700 people directly and
22 indirectly employed by these plants. In our view, it does
23 not pass the test of being in the public interest. Thanks
24 for the opportunity to talk.

1 CHAIRMAN GETZ: Thank you. Is there
2 anything further before we turn back to Mr. Bersak?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Hearing nothing,
5 then, Mr. Bersak.

6 MR. BERSAK: Thank you, Mr. Chairman.
7 Just one thing about the public comment that you just
8 heard. I recognize it is now deemed to be public comment,
9 but I'm sure the Commission recognizes that Mr. Berti did,
10 in fact, file testimony in this proceeding, that was
11 withdrawn when its sponsor withdrew as an intervenor.
12 And, to now reintroduce that testimony is somewhat
13 peculiar, I suppose is a good word, but I'm sure you'll
14 give it the weight to which it's due.

15 Good morning again, Mr. Frantz,
16 Mr. McCluskey.

17 WITNESS McCLUSKEY: Good morning.

18 WITNESS FRANTZ: Good morning.

19 THOMAS C. FRANTZ, previously sworn

20 GEORGE R. McCLUSKEY, previously sworn

21 CROSS-EXAMINATION (resumed)

22 BY MR. BERSAK:

23 Q. I was wondering if you had any success finding the lost
24 RECs last night?

1 A. (McCluskey) Well, there's certainly plenty to come from
2 the Laidlaw plant that I'm sure we'll find them.

3 Q. All righty. You testified on Page 21, at Line 12 of
4 your testimony, --

5 A. (McCluskey) Page? Page?

6 Q. Page 21, Line 12. "Once acquired, PSNH's investment in
7 the facility will presumably be added to its generation
8 rate base." Yesterday, you were discussing a
9 hypothetical with respect to your testimony regarding
10 the violation or your alleged violation of the "used
11 and useful" standard of ratemaking. And, in your
12 hypothetical, you're saying "suppose, hypothetically,
13 there was no PPA." Do you recall that testimony from
14 yesterday?

15 A. (McCluskey) I do.

16 Q. Isn't it true that the PPA is a requirement, a
17 condition for this plant going forward?

18 A. (McCluskey) That's my understanding, yes.

19 Q. So, if there is no PPA, there is no facility, and,
20 therefore, the hypothetical from the start is just not
21 valid, is it?

22 A. (McCluskey) I disagree. We were simply -- the
23 hypothetical was stating that PSNH could at any time
24 come to the Commission and say "we would like to

1 acquire a renewable resource at some point in time, and
2 this is the way to do it. It could do that without the
3 current PPA ever being developed. The hypothetical
4 could be proposed to the Commission at any time.

5 Q. But your hypothetical dealt with the fact that -- that
6 monies that were going into the Cumulative Reduction
7 Fund were deemed to be violative of the "used and
8 useful" standard?

9 A. (McCluskey) In the hypothetical, there was no
10 Cumulative Reduction Fund. There would just simply be
11 a request for the Company to charge customers a
12 premium, so it could build up a fund, which it could
13 use in the future to purchase a facility or purchase
14 part of a facility, depending on the cost of the
15 facility and the balance in that fund. That was the
16 hypothetical.

17 Q. But that's not the case that we have here, is it?

18 A. (McCluskey) I think the hypothetical is very close to
19 what we have here. The difference in the hypothetical
20 is that PSNH would actually be retaining the 10 percent
21 premium dollars. In this case, the above-market
22 payments are actually going to Laidlaw. Laidlaw is
23 sitting with those dollars, and is agreeing to allow a
24 discount to the purchase price, depending on the

1 balance in the Cumulative Reduction Account. So, I
2 think the two -- I think the hypothetical is very close
3 to what you have proposed in this PPA.

4 Q. Isn't it true that the PPA, if approved, will be a
5 wholesale power sales agreement, subject to FERC's
6 jurisdiction under the Federal Power Act?

7 A. (McCluskey) That's my understanding.

8 Q. So, you're looking through the FERC tariff and picking
9 and choosing pieces that you like and don't like, and
10 attributing them to different categories of costs.

11 MS. AMIDON: Objection. Is there a
12 question there?

13 BY MR. BERSAK:

14 Q. Are you?

15 A. (McCluskey) I'm not looking at any FERC tariff. I'm
16 looking at the PPA as filed. This Commission has
17 jurisdiction to determine whether the PPA is in the
18 public interest. We are simply analyzing the various
19 components of it and stating what we consider to be
20 reasonable and unreasonable.

21 Q. I see. I suppose that the ultimate question is, is
22 compliance with a FERC approved and filed tariff
23 violative of "used and useful" ratemaking standard?

24 A. (McCluskey) There is no -- as I just said, Mr. Bersak,

1 there is no FERC approved tariff in front of us today.
2 There's a PPA being submitted to the Commission for its
3 approval. It can apply whatever ratemaking principles
4 it deems to determining whether that PPA is in the
5 public interest.

6 Q. True. But, if it was approved by this Commission, and
7 if it was a FERC jurisdictional tariff, and if PSNH
8 paid the amounts under that tariff, would there be a
9 violation of the "used and useful" standard?

10 MS. AMIDON: I think he answered the
11 question.

12 MR. BERSAK: I'm not sure that he did.

13 CHAIRMAN GETZ: Well, it seems to me
14 that your real question is, "does this FERC tariff preempt
15 state action?" And, I mean, it sounds to me like you're
16 calling for a legal conclusion from Mr. McCluskey in that
17 respect.

18 MR. BERSAK: Well, I think that he made
19 the legal conclusion in his testimony, saying that this
20 was "violative of the "used and useful" standard." So,
21 I'm just probing to find out, one, you know, if the
22 Commission --

23 CHAIRMAN GETZ: Well, I think he's been
24 making the distinction all along between the ratemaking

1 principle of "used and useful", and without invoking the
2 CWIP -- the anti-CWIP statute.

3 MR. BERSAK: I think it was Mr. Traum
4 with the anti-CWIP. I think Mr. McCluskey is "used and
5 useful".

6 CHAIRMAN GETZ: I believe that's what I
7 just said.

8 MR. BERSAK: Okay. I'm sorry. Well,
9 we'll move on.

10 BY MR. BERSAK:

11 Q. If you turn to Page 24 of your testimony, on Line 10.
12 Your testimony reads, "PSNH has said that the process
13 of negotiating the pricing provisions in the PPA was
14 not directly influenced by the price of other renewable
15 projects. This response, when considered in isolation,
16 suggests that cost minimization was not high on the
17 Company's list of objectives for the PPA." What do you
18 mean by the phrase "when considered in isolation"?

19 A. (McCluskey) Well, just with respect to that particular
20 response, the question that we asked the Company in
21 discovery was "did you compare the PPA prices with
22 other -- with the prices of other comparable projects?"
23 And, the Company effectively said "no." And, so, just
24 focusing on that particular response, I wrote what you

1 just read into the record. So, in isolation,
2 considering just that one test, comparing the PPA
3 prices with other comparable projects or the prices of
4 other comparable projects, then it would suggest that
5 cost minimization was not high on the Company's list.
6 And, I think I'll leave it at that.

7 Q. Your testimony was filed after we filed our petition in
8 this proceeding, which was accompanied by the Direct
9 Testimony of Mr. Long, is that correct?

10 A. (McCluskey) That's correct.

11 Q. So, when you testified that "cost minimization was not
12 high on the Company's list of objectives for the PPA",
13 were you directly countering Mr. Long's testimony, his
14 direct testimony, on Page 4, where he says "PSNH's
15 desire is, of course, to meet these goals in a cost
16 competitive manner from a customer's viewpoint"?

17 A. (McCluskey) Yes. I am countering that, if that was the
18 word that you used. In addition to not comparing the
19 PPA prices with the price of the comparable projects,
20 the Commission -- the Company chose not to use a
21 competitive solicitation. PSNH also rejected lower
22 price offers from CPD and Concord Steam. PSNH's own
23 financial analysis showed that Laidlaw investors would
24 receive unreasonably high returns under the PPA. PSNH

1 has agreed to purchase RECs that it doesn't need. PSNH
2 agreed to have customers take the risk that the RPS
3 terminates in 2025. PSNH's comparison of PPA energy
4 prices with the forecast of market energy prices shows
5 the former to be well above market. And, PSNH has
6 agreed to have customers take the risk that the plant
7 will have little value at the end of the term. All of
8 these facts demonstrate, in my view, that cost
9 minimization is not high on the Company's list of
10 objectives.

11 Q. So, are you saying that Mr. Long's testimony was
12 untruthful?

13 A. (McCluskey) I'm not saying it was untruthful or not. I
14 just disagree with it, based on the facts that I just
15 entered into the record.

16 Q. On Page 26, Line 12, of your testimony, you reference
17 your "Exhibit GRM-12".

18 A. (McCluskey) Yes.

19 Q. The figures on GRM-12, are they based on a wood price
20 of \$27 per ton?

21 A. (McCluskey) Just one moment. The first column in
22 Exhibit GRM-12 has the energy prices from Mr.
23 Labrecque's attachment. And, it reflects a \$34 per ton
24 fuel price, escalating at 2.5 percent per annum.

1 Q. Would you agree that a greater than 20 percent drop in
2 the price of wood would have a significant effect on
3 the data included in your exhibit?

4 A. (McCluskey) I think it's already been established that
5 the actual energy prices in the PPA will reflect the
6 actual fuel costs at the time. So, if there is a
7 decrease or an increase in fuel costs relative to \$34 a
8 ton, then the prices shown in the first column of
9 Exhibit 12 will change.

10 Q. Are the figures included in this exhibit used
11 throughout all the other calculations in your
12 testimony?

13 A. (McCluskey) Well, I'm not sure what calculations you're
14 referring to. Here, this exhibit is designed to
15 compare the PPA prices with a forecast or benchmark or
16 projection, whatever you want to use, of market energy
17 prices going forward. This, the second column, the
18 "Adjusted Market Energy Prices", uses the PSNH
19 methodology that produced an earlier price forecast.
20 And, it's simply updated to reflect more recent NYMEX
21 electricity and natural gas prices. And, the third
22 column is the difference between the two. And, it's --
23 I'm not sure where I would -- where else I would use
24 the information in this exhibit elsewhere in my

1 testimony. It is certainly the basis of the statement
2 in my testimony that the energy prices in the PPA are
3 of the order of \$290 million above market. This
4 calculation, the calculation shown here, is the basis
5 of that number. Other than that, I don't recall using
6 these prices elsewhere.

7 Q. So, what I gathered from what you just said, let me
8 know if I'm incorrect, you used the data on this page
9 to determine your over-market calculations?

10 A. (McCluskey) Over-market -- the over-market energy
11 costs, that's correct. Obviously, there's a separate
12 calculation for over-market REC costs.

13 Q. If you turn to GRM-13, did you similarly use the
14 information, the data that's on GRM-13, to provide
15 calculations with respect to the over-market estimates
16 of REC purchases?

17 A. (McCluskey) Yes. Let me just explain how Exhibit 13
18 works, what's going on here. The first column --

19 Q. I really didn't ask that question, Mr. McCluskey. If
20 the figures on either of these exhibits were inaccurate
21 for any reason, would you agree that your over-market
22 energy or your over-market REC calculations were also
23 inaccurate?

24 A. (McCluskey) "Inaccurate", you mean --

1 Q. In error.

2 A. (McCluskey) In error? If it's demonstrated that
3 there's an error, then the resulting difference would
4 be in error, and the above-market estimate for REC
5 prices would be in error. That's correct.

6 Q. Now, just a couple minutes ago you were talking about
7 your criticism of PSNH for not comparing the PPA to
8 other renewable projects, do you recall that?

9 A. (McCluskey) Yes.

10 Q. Turn to Page 28 of your testimony.

11 A. (McCluskey) Which line?

12 Q. Or, actually, I'm sorry. Twenty-six. My mistake, I'm
13 sorry.

14 A. (McCluskey) And, the line number?

15 Q. Let's see here. Well, it begins on 26 and goes into
16 27. Inside your testimony, you have comparisons to the
17 Company's -- of the PPA with the Company's contract
18 with Lempster Wind, is that correct?

19 A. (McCluskey) That's correct.

20 Q. Do you consider the Lempster Wind development to be a
21 renewable project comparable to the proposed Laidlaw
22 biomass facility?

23 A. (McCluskey) Yes. Under this PPA, PSNH is proposing to
24 purchase three products; energy, capacity, and RECs.

1 Under the Lempster PPA, you're actually purchasing
2 those three products. Both facilities will qualify for
3 Class I REC status. It just so happens the difference
4 is that they're using different technologies. So, from
5 the standpoint of the products delivered, you can
6 acquire them with wind or you can acquire them with
7 biomass.

8 Q. Do you disagree with Mr. Sansoucy's testimony where he
9 described the significant differences between a biomass
10 form of generation and a wind form of generation?

11 A. (McCluskey) They certainly have different
12 characteristics, different capacity factor, for
13 example. They've certainly got different cost
14 structures. But they produce the same products. And,
15 I guess that's why they're both in the same class for
16 the New Hampshire RPS. You may, in order to acquire
17 the same amount of energy and RECs as this particular
18 project, you would have to have more wind projects.
19 But I suspect there are benefits to having fewer REC
20 purchases, because of the particular needs of PSNH at
21 this time. So, I think a wind project might actually
22 better fit the REC requirement profile that the Company
23 will be looking at over the next 10 to 15 years.

24 Q. Last Tuesday, and again yesterday, during your

1 testimony, or last Tuesday it was the "unanticipated
2 surrebuttal", as the Chairman described it, you
3 testified about what you called "successful competitive
4 programs in Massachusetts and New York to obtain
5 renewable generation." Do you recall that testimony?

6 A. (McCluskey) Yes.

7 Q. So, it would be my understanding that you tend to
8 follow what is happening in nearby states regarding
9 renewable energy costs and development?

10 A. (McCluskey) Not costs. I've, in preparation for this
11 particular proceeding, I've reviewed the structure of
12 the RPS in New York and Massachusetts. And, I think I
13 testified that I reviewed testimony submitted by James
14 Daly for NSTAR, describing the results of a particular
15 solicitation in Massachusetts. And, I've also
16 described a Summit Blue study, which surveyed
17 developers in New York, with regard to their
18 preferences for long-term contracts and various other
19 things. One of the things that the Summit Blue study
20 was addressing was why the PPA -- why the REC prices in
21 New York were quite a bit lower than in the neighboring
22 states. So, I think that was the summary of the
23 testimony that I gave with regard to those two states.

24 Q. Do you have your response to PSNH Data Request Number

1 52 available?

2 MR. BERSAK: Mr. Desbiens can pass that
3 out and have that marked as our next PSNH exhibit, which
4 is?

5 CHAIRMAN GETZ: Twenty.

6 MR. BERSAK: Twenty. Thank you, Mr.
7 Chairman.

8 (The document, as described, was
9 herewith marked as Exhibit 20 for
10 identification.)

11 BY MR. BERSAK:

12 Q. Let me know when you have that data response,
13 Mr. McCluskey.

14 A. (McCluskey) I've got it. I've got that.

15 Q. In response to PSNH Data Request 52, you indicated that
16 you do not consider the Cape Wind Project to be a
17 comparable renewable project. You were also asked
18 whether you "compared the PPA to any of the three
19 biomass PPAs executed pursuant to a competitive
20 solicitation under the Connecticut Project
21 150 process?" And, is it true that your response was
22 "No. Mr. McCluskey...has no familiarity with the
23 Connecticut Project 150 process"?

24 A. (McCluskey) That's correct.

1 Q. You testify that you based some or a great deal of your
2 analyses on the report by Synapse Energy Economics
3 entitled "Avoided Energy Supply costs in New England
4 2009 Report", is that correct?

5 A. (McCluskey) No. I said very clearly that my analysis
6 of the REC prices in the PPA are based on a projection
7 developed by Synapse, a long-term projection. So, I
8 don't recall comparing the other components of the PPA
9 with anything that was in the Synapse study. I
10 certainly used the REC prices from the Synapse study as
11 a benchmark for the PPA REC prices.

12 Q. During last Tuesday's testimony, though, didn't you
13 criticize PSNH's view that "the Synapse Report might
14 not be reliable, because the short-term REC prices have
15 proven to be inaccurate"?

16 A. (McCluskey) Yes, I did. Reading the study, they
17 clearly state that the first few years of the long-term
18 projection, they're actually based on REC quotes, as
19 opposed to the results of the long-term supply/demand
20 model that Synapse developed. So, simply pointing out
21 that the current market prices are lower than the early
22 year prices in the Synapse study is not necessarily an
23 indication that the results of the modeling exercise
24 that Synapse did is faulty.

1 Q. Last Tuesday, in fact, didn't you chastise
2 Mr. Labrecque by stating "Well, in fact, if you
3 actually read the Synapse Report, they state clearly
4 that there's two components to their long-term price
5 forecast"?

6 A. (McCluskey) Well, I have no intent to chastise
7 Mr. Labrecque. I was simply -- we're in a proceeding,
8 we have different views. I think I have the right to
9 comment on what Mr. Labrecque is testifying to. It's
10 not personal. I'm simply stating my view of what's in
11 the Synapse study.

12 Q. So, you've actually read the Synapse Report, Mr.
13 McCluskey?

14 A. (McCluskey) I've certainly read the section recently,
15 and, as I developed my testimony, regarding the REC
16 prices, I've also read other sections extensively, as
17 part of what is called the "DER proceeding" that
18 involves Unitil, Distributed Energy Resource
19 proceeding. The Synapse study figured heavily in that
20 particular case. Some of which had to do with energy
21 prices, some of which, particularly, the carbon
22 forecast that was in the Synapse study.

23 Q. That Connecticut Project 150, which you responded in
24 the data request you have no familiarity with, are you

1 aware that in the Synapse Report it's referred to eight
2 times?

3 A. (McCluskey) It may well be. This, until I received
4 this data request, I wasn't even familiar with the
5 Connecticut Project 150. So, it's quite possible that
6 I read the Synapse study and just glossed straight over
7 any statement regarding this particular process.

8 Q. Mr. Sansoucy has relied upon market data produced by
9 Ventyx. Do you think that the Ventyx information is
10 reliable?

11 A. (McCluskey) I've testified that I was not familiar with
12 Ventyx, as a company or the product that it produces.
13 I have no basis to say that it's reliable or
14 unreliable. Based on the testimony of Mr. Sansoucy, I
15 understand it's a large concern. So, I suspect it
16 produces good work.

17 Q. You just referred to your testimony of last Tuesday,
18 where you testified "I've never even heard of Ventyx
19 before the hearings." Do you recall that?

20 A. (McCluskey) That's correct.

21 Q. Are you aware that in seven places in the Synapse
22 Report they refer to and rely on data from Ventyx?

23 A. (McCluskey) Again, I haven't -- hadn't heard of Ventyx.
24 So, again, I could have read the Synapse Report, seen

1 the reference to "Ventyx", and it wouldn't have meant a
2 thing to me.

3 Q. Regarding your criticism that "PSNH did not compare the
4 PPA to other renewable projects", isn't it true that
5 Mr. Labrecque testified that "PSNH conducted research
6 to discover the pricing terms included in other
7 recently announced and publicly available long-term
8 contracts for renewable generation facilities"?

9 A. (McCluskey) My question to the Company in discovery was
10 whether they "had compared the PPA pricing being
11 negotiated with comparable projects to determine
12 whether the prices were reasonable before they entered
13 into the agreement?" The data that Mr. Labrecque
14 provides in his second attachment relates to projects
15 that, in some cases, the Company could not have known
16 the results at the time it negotiated the agreement,
17 which I understand was in 2008.

18 Q. You referred to the "second attachment to
19 Mr. Labrecque's testimony", that's RCL-2, correct?

20 A. (McCluskey) Correct.

21 Q. Isn't it true that, in RCL-2, Mr. Labrecque included 13
22 comparable renewable resources, including three biomass
23 proposals that were part of the Project 150 process
24 that you claim unfamiliarity with?

1 A. (McCluskey) I don't have it in front of me, but I
2 accept what you say.

3 Q. That Project 150 process was created by Connecticut
4 statute, and involved the issuing of request for
5 proposals, excuse me, from developers for at least 150
6 megawatts of renewable energy capacity. Wouldn't you
7 deem the results of such solicitation for renewable
8 energy to be somewhat comparable to the Massachusetts
9 and New York processes you referred to in your
10 testimony?

11 MS. AMIDON: Well, objection. I mean,
12 Mr. McCluskey has already testified that he's not familiar
13 with the Connecticut 150 Project.

14 MR. BERSAK: My question to him was, by
15 statute, it mandates a competitive process to acquire
16 generation. I'm asking whether such a process would be
17 comparable to the Massachusetts and New York processes
18 that he's testifying to?

19 CHAIRMAN GETZ: We'll allow the
20 question, if you have an answer.

21 BY THE WITNESS:

22 A. (McCluskey) I think it's always good to look at as much
23 data as is available. But I'm simply making the point
24 that, when we asked you "what did you, PSNH, use to

1 compare with the PPA prices?" You said nothing. "We
2 didn't use any prices from comparable projects." And,
3 I'm testifying that it would have been a good idea to
4 use prices from, if available, from projects in New
5 York, from Massachusetts, from Connecticut.

6 And, I'm simply saying, with regard to
7 Connecticut, I am not familiar with that process. And,
8 now, bear in mind, Commission, this has been a fairly
9 tight schedule. There's only -- I think we made a
10 valiant effort to review this PPA and describe our
11 concerns about it. We didn't have an infinite amount
12 of time to research this PPA. And, maybe if we had, we
13 would have looked more closely at Connecticut. We just
14 simply didn't have the time to do it. But, I agree, if
15 there's useful data in Connecticut, then Staff should
16 have used it, and I think the Company should have used
17 it to benchmark the PPA prices.

18 BY MR. BERSAK:

19 Q. When did PSNH file its petition in this proceeding?
20 Subject to check, July 26, 2010. It's now February --

21 A. (McCluskey) Yes.

22 Q. -- 2011, is that correct?

23 A. (McCluskey) Yes.

24 Q. Would you -- this morning you testified that the

1 competitive process would be superior to the bilateral
2 negotiations that PSNH entered into to create the
3 Laidlaw PPA. Do you recall that?

4 A. (McCluskey) I do.

5 Q. Would you turn to Attachment RCL-2 in Mr. Labrecque's
6 testimony that you referred to earlier. You see the
7 first entry "Plainfield Renewable Energy"?

8 A. (McCluskey) Give me a moment. Yes.

9 Q. According to the Connecticut Department of Public
10 Utility Control's January 30, 2008 order in its docket
11 07-04-27, the Plainfield plant was expected to begin
12 operation in July 2009. Do you know whether this
13 facility is in operation?

14 A. (McCluskey) I don't.

15 Q. Do you even know if it has started construction?

16 A. (McCluskey) No, I don't.

17 Q. Do you see "Clearview" facility on Attachment RCL-2?

18 A. (McCluskey) Yes.

19 Q. According to that same DPUC order, the Clearview
20 facility was expected to begin operation in October of
21 2009. Do you know whether that facility is in
22 operation?

23 A. (McCluskey) I don't.

24 Q. Do you know if it has started construction?

1 A. (McCluskey) No.

2 Q. Do you see the "Watertown" facility on that same
3 exhibit?

4 A. (McCluskey) I do.

5 Q. According to that same order, it's projected operation
6 date was May 3rd of 2010. Do you know its status?

7 A. (McCluskey) I don't.

8 MS. AMIDON: Objection. Mr. McCluskey
9 said he is not familiar with the Connecticut 150 Project.
10 If these are related to that, then, obviously, he would
11 not have any knowledge about this. So, perhaps we could
12 move on.

13 CHAIRMAN GETZ: Do you have other
14 questions?

15 MR. BERSAK: No. No other questions
16 about that.

17 BY MR. BERSAK:

18 Q. Are you aware of any new biomass generation being built
19 in Connecticut over the last few years?

20 A. (McCluskey) I can't recall a specific project. I'm
21 sure I've read references to renewable projects, such
22 as biomass, being developed in all of the New England
23 states. But I couldn't, today, put a name to any of
24 those.

1 Q. Would you be surprised to learn that the Connecticut
2 Project 150 statute has been the law since 2006, and
3 not one project is actually under construction?

4 A. (McCluskey) Would I be surprised? I have no
5 information which would help me say "yes" to that
6 question.

7 Q. I would guess that then, from your answers to the
8 previous questions, that you're not aware of a
9 different DPUC Docket, 03-07-17, Reopener 05, that the
10 Clearview and Watertown facilities recently petitioned
11 that department to change the terms of their contracts
12 that they entered into following their RFP process
13 because those contracts are not financeable?

14 A. (McCluskey) I'm not familiar with that.

15 Q. Are you familiar with, to something closer to home, are
16 you familiar with the now shut down paper mill in
17 Gorham, New Hampshire?

18 A. (McCluskey) Yes.

19 Q. Hasn't that mill been in and out of bankruptcy over the
20 past decade?

21 A. (McCluskey) That's my understanding.

22 Q. Are you aware that part of the financial viability of
23 the Clean Power Development project was the sale of
24 thermal products to that mill?

1 A. (McCluskey) I understand there was a thermal element to
2 their proposal.

3 Q. If the mill is not likely to be a thermal customer of
4 CPD, would a combined heat and power design for that
5 plant be cost-effective?

6 A. (McCluskey) I couldn't comment on that.

7 Q. If a combined heat and power design would not have been
8 cost-effective, because of loss of its thermal
9 customer, is it likely that CPD could not have met the
10 terms of its offer to PSNH, winding up like the Project
11 150 developments?

12 A. (McCluskey) We simply have too little information to
13 say "yes" or "no" to that question. Who knows how CPD
14 would have responded with the loss of the thermal load.

15 Q. Are you aware that Concord Steam or Concord Power &
16 Steam, LLC, has not been able to find buyers it needs
17 in order to move ahead with its new facility?

18 A. (McCluskey) I don't know in detail. I did hear that
19 they had entered into contracts for the majority of the
20 output. They -- apparently, they had 4 megawatts that
21 they were still looking for a buyer. That was within
22 the last couple of weeks that was told to me. So, I
23 think that answer is a little -- is not consistent with
24 what you just indicated through your question.

1 Q. They did join in a complaint docket against Public
2 Service of New Hampshire before this Commission, didn't
3 they?

4 A. (McCluskey) I was not involved in that docket. I
5 really don't know whether they did or not.

6 Q. Their facility, if and when it's built, will be
7 connected through the Unutil system to the entire New
8 England grid, correct?

9 A. (McCluskey) It's in the Unutil Service area. So, I
10 would expect it to use the Unutil system at some point,
11 in order to get out of that service area.

12 Q. Once they're interconnected, they would have the
13 availability of every member of NEPOOL to be a
14 potential customer?

15 A. (McCluskey) For the output?

16 Q. Yes.

17 A. (McCluskey) Yes. They could sell it into the
18 short-term market, they could enter into contracts for
19 anyone who either wishes to market energy or has a load
20 to serve.

21 Q. So, if they were having difficulty trying to find
22 buyers for their product, would reflect that nobody in
23 the NEPOOL region has an interest in buying the
24 products at the price they're offering to them?

1 A. (McCluskey) I have no idea what prices they are
2 seeking, so I can't comment on whether that is the
3 case.

4 Q. I think you started off your testimony by saying that
5 "the purpose of this proceeding is to determine whether
6 the PPA is in the public interest." Do you recall
7 that?

8 A. (McCluskey) I think that's the primary objective for
9 the Commission.

10 Q. And, you testified, at Page 9, Line 20, "The stated
11 purpose of RSA 362-F, New Hampshire's RPS, is to
12 stimulate investment in low emission renewable
13 generation technologies." Do you see that?

14 A. (McCluskey) Yes.

15 Q. Isn't it true that the RPS law, in fact, at RSA
16 362-F:1, states that "It is therefore in the public
17 interest to stimulate investment in low emission
18 renewable energy generation technologies in New England
19 and, in particular, New Hampshire, whether at new or
20 existing facilities"?

21 A. (McCluskey) Yeah, could you repeat that, the reference.

22 Q. RSA 362-F:1.

23 CHAIRMAN GETZ: The last sentence.

24 MR. BERSAK: The last sentence. Thank

1 you, Mr. Chairman.

2 BY THE WITNESS:

3 A. (McCluskey) Yes, it does.

4 BY MR. BERSAK:

5 Q. And, isn't it also true that, when enacting the RPS
6 law, the Legislature expressly found that "The 2002
7 State Energy Plan recommended establishing a renewable
8 portfolio standard to support indigenous renewable
9 energy sources, such as wood and hydroelectric, to
10 encourage investments in renewable power generation in
11 the state and to allow New Hampshire to benefit from
12 the diversity, reliability, and economic benefits that
13 come from clean power"?

14 A. (McCluskey) That's correct.

15 Q. The reference to that, you probably don't have that in
16 the statute. That was in the session laws, at 2007,
17 Chapter 26, Section 1. When the Legislature said its
18 purpose is to "stimulate investment and encourage
19 investment in new renewable power generation", would
20 you agree that these public interest statements mean
21 the actual building of generation, and not just having
22 developers invest significant sums in SEC, permitting
23 PUC, and litigation expenses?

24 A. (McCluskey) The question again was what?

1 Q. When the Legislature said its purpose is to "stimulate
2 investment and encourage investments in new renewable
3 power generation", would you agree that the
4 Legislature's intent was the actual building of
5 generation?

6 MS. AMIDON: Objection. I mean, there's
7 no way Mr. McCluskey can know what the legislative intent
8 is. And, furthermore, the public interest in this
9 particular proceeding is governed by RSA 362-F:9, which
10 has five criteria, which -- whereby the Commission
11 determines whether a long-term PPA is in the public
12 interest.

13 CHAIRMAN GETZ: I'm going to allow the
14 question, because the door's been opened with respect to
15 what the purpose of the statute is, and this is further
16 inquiry along that line.

17 BY THE WITNESS:

18 A. (McCluskey) I think it's a reasonable interpretation
19 that the Legislature would hope that facilities will
20 actually be built. And, as you said, not just all the
21 parties to this proceeding and the Commission spinning
22 their wheels listening to all the arguments for and
23 against. And, I have to say again that that is why the
24 Staff has taken the position in support of this project

1 and its location in Berlin. We simply feel that the
2 prices are excessive and that they should be reduced in
3 order to achieve the public interest. So, Staff is not
4 proposing anything which is contrary to the intent as
5 you've described in the legislation.

6 BY MR. BERSAK:

7 Q. About ten minutes ago you testified that you "based
8 some of your analysis", I believe the REC analyses, "on
9 the Synapse Report", is that correct?

10 A. (McCluskey) Correct. I took the Synapse long-term
11 prices and made an adjustment to them, and used that as
12 the benchmark for comparing the PPA REC prices. And,
13 that was in Exhibit 13.

14 Q. Do you recall the cross-examination yesterday with
15 respect to -- it was the new exhibit, Staff -- I think
16 it was Staff 14. Was Staff 14 the spreadsheet that you
17 put in that compared the Ventyx numbers, with and
18 without carbon?

19 A. (McCluskey) Staff Exhibit 14, correct.

20 Q. In this Synapse Report, doesn't Synapse state that
21 their analyses include three cents per kilowatt-hour
22 for carbon externality costs in all of their analyses?

23 A. (McCluskey) You're referring to the wholesale
24 electricity prices?

1 Q. Yes, sir.

2 A. (McCluskey) Yes. I believe they do make some
3 assumptions with regard to carbon.

4 Q. If they removed carbon externality costs from their
5 analyses, wouldn't it have the result of having to
6 drive the cost of the RECs higher than what they have
7 in their report?

8 A. (McCluskey) It would.

9 Q. You've testified that the REC prices forecast by
10 Synapse in the short-term have proven to be too high,
11 isn't that correct?

12 A. (McCluskey) Correct. I've stated that the current
13 market price for Class I RECs is of the order of \$16.

14 Q. I'd like to refer you to your footnote on Page 28 of
15 your testimony. You acknowledge that inaccuracy in
16 that footnote, when you say "Given that current market
17 prices for New Hampshire Class I RECs are below \$20,
18 the near term adjusted Synapse prices could
19 reasonably be described as being too high." Do you see
20 that?

21 A. (McCluskey) That's correct.

22 Q. Isn't it true that PSNH asked you a data request
23 regarding this footnote? I'll refer you to PSNH
24 Question 23.

1 MR. BERSAK: And, hand it out,
2 Mr. Desbiens.

3 (Mr. Desbiens distributing documents.)

4 BY THE WITNESS:

5 A. (McCluskey) Yes. That's correct. PSNH-23.

6 MR. BERSAK: All right. Mr. Desbiens is
7 just distributing that. For the record, would like to
8 mark that as the next PSNH exhibit, I believe that's 21
9 please.

10 CHAIRMAN GETZ: So marked.

11 (The document, as described, was
12 herewith marked as PSNH Exhibit 21 for
13 identification.)

14 BY MR. BERSAK:

15 Q. In that data request, you see PSNH asked "How do actual
16 conditions in the current REC market differ from those
17 assumed in the Synapse Report?" Referring back to the
18 footnote we just read, correct?

19 A. (McCluskey) Correct.

20 Q. And, your answer was "See Attachment 1-22(b) to PSNH
21 1-22 for the assumptions in the Synapse...Report." Is
22 that correct?

23 A. (McCluskey) Correct.

24 Q. Isn't what you supplied as Attachment 1-22(b) the

1 entire Synapse Report?

2 A. (McCluskey) Correct.

3 Q. So, despite including in your testimony a reference
4 regarding alleged differences you had with the Synapse
5 Report, when asked for information regarding those
6 differences, your response was "See the Synapse
7 Report", without any particular reference therein?

8 A. (McCluskey) Well, the Company and other discovery
9 requests asked for the report. You're asking a
10 question about what's in the report. And, I think it's
11 reasonable to say "Well, read the report." I'm not
12 trying to hide the ball.

13 Q. Yesterday, you criticized the ISO-New England RPS Needs
14 Chart, that was attached to PSNH rebuttal testimony as
15 "Attachment PSNH Rebuttal 6". Do you recall that?

16 A. (McCluskey) I certainly commented on it. I'm not sure
17 whether I would describe it as "criticism". You asked
18 me to comment on it, which I did.

19 Q. I believe you said that "the Synapse Report was a much
20 more sophisticated analysis than what ISO-New England
21 had done"?

22 A. (McCluskey) Yes. I believe that's the case.

23 Q. In the Synapse Report -- do you have a copy of the
24 Synapse Report available, Mr. McCluskey?

1 A. (McCluskey) Not with me.

2 Q. Would you like a copy?

3 A. (McCluskey) Sure.

4 Q. This was provided to the Company in response to PSNH
5 Data Request 1-22. If you turn to 2-9 of the Synapse
6 Report, where they are talking about their 2009
7 forecast. Isn't it true that Synapse says that "Beyond
8 2018, we extrapolate using the long-term compound
9 annual growth rate reflected in the CELT 2009 forecast.
10 For context, ISO-New England's 2009 long-term annual
11 average rate of summer peak growth [in] the ISO-New
12 England Control Area is 1.17 percent."

13 A. (McCluskey) Okay.

14 Q. Do you agree with that?

15 A. (McCluskey) Yes.

16 Q. That I read that?

17 A. (McCluskey) That's what it says.

18 Q. So, at the end of the period, of the forecast period,
19 Synapse adjusted its forecast using something like an
20 inflation factor, correct?

21 A. (McCluskey) I think -- I think we're talking about the
22 load forecast, is that correct?

23 Q. Yes.

24 A. (McCluskey) We're not talking about the prices then?

1 Q. No, I'm talking about the load forecast.

2 A. (McCluskey) Okay. That appears to be what they're
3 saying here.

4 Q. And, last week you said, using those exact same words,
5 that "that technique is hardly a sophisticated
6 analysis."

7 MS. AMIDON: Objection. I think he was
8 referring to the analysis of the need for renewable
9 facilities, but I'll let --

10 BY THE WITNESS:

11 A. (McCluskey) No. The analysis I was referring to was
12 the development of the REC prices, using a
13 sophisticated supply/demand model. Here, we're talking
14 about something totally different. We're talking about
15 a load forecast.

16 BY MR. BERSAK:

17 Q. I believe, when you made that reference last Tuesday,
18 Mr. McCluskey, if I recall, you were criticizing the
19 Levitan report. Because, at the end of the forecast
20 period, it just uses an inflation factor to adjust the
21 capacity in the later years, exactly what Synapse has
22 done in its report here?

23 A. (McCluskey) That's correct. So, I'm talking -- my
24 testimony was regarding the sophistication of the

1 supply/demand model. I was not testifying on the
2 sophistication of the rest of the report.

3 Q. And, one more thing. Isn't it true that Synapse based
4 its load forecast, as I just read, on the ISO-New
5 England data?

6 A. (McCluskey) That appears to be the case.

7 Q. On Page 27, Line 18 of your testimony, do you have
8 that, Mr. McCluskey?

9 A. (McCluskey) Yes, I do.

10 Q. You state that your "analysis of above-market energy
11 costs was based on an energy market price forecast that
12 is approximately 30 percent lower than the energy price
13 forecast used by Synapse." Is that correct?

14 A. (McCluskey) That's correct.

15 Q. So, it appears to the Company that you based your REC
16 analysis on a report that you say has "proven wrong in
17 the short-term", and whose energy assumptions you
18 disagree with over the long term. Is that correct?

19 A. (McCluskey) Could you give me the question again.

20 Q. Sure. It appears that you based your REC analysis on a
21 report that you say has "proven wrong in the
22 short-term" and whose energy assumptions you disagree
23 with over the long-term. Is that correct?

24 A. (McCluskey) No. The market energy prices, conditions

1 in the energy market change. And, so, depending on
2 when an analysis is done, you're going to produce a
3 different price forecast. If someone developed a
4 forecast at the height of the power market in 2008, one
5 would expect that the forecast would tend to indicate
6 some of the conditions that they were experiencing at
7 that time. If they repeated the forecast several years
8 later, and the market conditions have changed, one
9 would expect the long-term forecast to increase or
10 decrease, depending on how conditions in the market
11 change.

12 I'm simply stating that the analysis
13 that I was doing was trying to use the most current
14 market price information, and that the Synapse study
15 was done at a prior time. Hence, I had to recognize
16 that, if I was going to use the Synapse price data, I
17 needed to adjust that price data for the fact that
18 market conditions are changed and so what I actually
19 did was to increase the REC prices to be consistent --
20 to have my analysis consistent. It would have been
21 unreasonable to use the unadjusted Synapse REC prices
22 along with a current forecast of energy, which I
23 developed. So, I was trying to get the REC
24 projections, as developed by Synapse, on a consistent

1 basis with the market energy prices, which I developed
2 using the PSNH model and the updated NYMEX data.

3 Q. You testified on Page 28 that a substantial portion of
4 what you think will be the "above-market cost of RECs
5 would be avoided if PSNH purchased only the RECs it
6 needs to meet its RPS obligations." That's on Line 8.
7 Do you see that, Mr. McCluskey?

8 A. (McCluskey) I do.

9 Q. Over the term of the PPA, do either you or PSNH know
10 for each year what PSNH's actual REC needs will be to
11 meet its RPS obligations?

12 A. (McCluskey) We will not know until it happens, but we
13 can make reasonable projections of what PSNH's REC
14 needs will be based on using reasonable assumptions as
15 to the Company's load, the migration from regulated
16 service to competitive market, and also obviously using
17 the percentages of retail load that are required, that
18 are specified in the RPS law. So, I think it's --
19 while we will not know for certain, we can make
20 reasonable estimates. And, I think it's reasonable to
21 use those estimates in determining whether this PPA is
22 in the public interest.

23 Q. Do you have an opinion as to whether the PPA would be
24 financeable, if it includes such a provision limiting

1 REC purchases to whatever the needs were in a
2 particular year during the term of the agreement.

3 A. (McCluskey) Well, it really depends on -- Staff has
4 recommended that there needs to be changes to the
5 pricing. Clearly, in the early years of the PPA, we've
6 calculated that PSNH has very little need for RECs from
7 Laidlaw. If that resulted in Laidlaw receiving only
8 market-based prices for its RECs, then it's possible
9 that, certainly, in the early years, they will be
10 unable to meet the coverage ratios. And, therefore, it
11 may not be financeable.

12 The problem is, the parties need to put
13 their heads together and come up with a pricing
14 approach that produces a more reasonable result for
15 customers, and also ensures the project is financeable.
16 We've had -- we had one day of settlement discussions.
17 I can't go into the details of what was addressed.
18 But, had we had more time, I truly believe that this
19 issue of need and the impact on the Company's revenue
20 -- on Laidlaw's revenues, and its ability to finance
21 the project, would have been front and center in the
22 discussions. I think there are -- Staff certainly has
23 ideas as to how to overcome that problem. So, just to
24 say that "PSNH doesn't have a need, hence Laidlaw is

1 going to have no REC revenues", is really too simple.

2 Q. I'm not sure whether I heard an answer to the question
3 as to whether such a provision would be financeable or
4 not?

5 A. (McCluskey) Well, I think I did address the financeable
6 issue. And, the way to address it is to have a pricing
7 structure, perhaps a two-part pricing structure, which
8 has prices for what is needed and prices for what's not
9 needed.

10 Q. If you could turn to your testimony on Page 28, Line
11 16. You testify that "Exhibit GRM-14 shows that over
12 the 20-year term the capacity prices in the PPA are
13 about 55 percent lower than Levitan's projections of
14 FCM prices." Do you see that?

15 A. (McCluskey) That's correct.

16 Q. And, is it true that your Exhibit GRM-14 states
17 "Nominal Savings \$40,143,600"?

18 A. (McCluskey) Just one moment. That's correct.

19 Q. What does that mean?

20 A. (McCluskey) Well, it's the same type of analysis that I
21 did for energy and RECs. That I compared the PPA
22 prices with, in this case, Levitan's capacity market
23 price projections and determined whether the prices are
24 above or below. And, the resulting calculation for the

1 full 20-year term indicates that the prices in the PPA
2 would be beneficial to customers, relative to this
3 view, Levitan's view of the market.

4 Q. But you kind of ignore that statement, don't you, by
5 testifying that, "As for the capacity product", you
6 know, this "is not conclusive". That's on Page 29,
7 Line 4, correct?

8 A. (McCluskey) That's correct.

9 Q. On Page 28, Line 19, you testify that you "had
10 insufficient time to review the Levitan [capacity]
11 price projections." Correct?

12 A. (McCluskey) That's correct.

13 Q. And, you recall last Tuesday you testified that "PSNH
14 was not responsive to Staff's data requests for
15 information concerning capacity projections." You
16 testified last Tuesday "In the first set, we asked them
17 for any price projections on capacity and any
18 associated reports and analyses. They provided a price
19 projection, but didn't provide the analysis behind it,
20 who developed the projection, and any report associated
21 with it." Do you recall that testimony?

22 A. (McCluskey) I do.

23 MR. BERSAK: I'd like to mark as the
24 next exhibit responses to Staff Data Request 1-3 and 1-7

1 by PSNH. That would be "22".

2 (The document, as described, was
3 herewith marked as PSNH Exhibit 22 for
4 identification.)

5 BY MR. BERSAK:

6 Q. Mr. McCluskey, if you can please take a look at Page 1
7 of -- which has been marked as "PSNH Exhibit 22" for
8 identification. That is a cover letter from PSNH's
9 Richard Labrecque, to Staff Attorney Amidon, dated
10 "October 18, 2010", forwarding responses to Staff Data
11 Requests, Set 1, is that correct?

12 A. (McCluskey) Correct.

13 Q. Take a look at PSNH -- some responses to Questions 1-3
14 and 1-7 provided on that date. Do you see that PSNH
15 provided you with the Levitan capacity prices as parts
16 of those data request responses?

17 A. (McCluskey) I see -- you're referring to the
18 attachment?

19 Q. Yes.

20 A. (McCluskey) And, the column headed "Capacity (dollars
21 per kilowatt-month)"?

22 Q. Talking about on Attachment, which was, I believe,
23 marked as "Page 3" of that exhibit, on Footnote 4 does
24 it mention the Levitan model for capacity?

1 A. (McCluskey) Yes.

2 Q. And, on Page 4 of that exhibit, does it again mention
3 the Levitan exhibit for capacity?

4 A. (McCluskey) Correct.

5 Q. And, on Page 5, in the third column of that exhibit,
6 does it talk about the "Levitan FCA Price"?

7 A. (McCluskey) Correct.

8 Q. And, if I get to the response to PSNH -- response to
9 Staff 1, Question 7, you will refer to our filing in
10 the Least Cost plan docket, which I believe you are the
11 Staff person working on?

12 A. (McCluskey) I'm assigned to work on it. I've yet to
13 set foot into that proceeding.

14 Q. If you look on the attachment to that data request,
15 Page 2 of 3, which is Page Number 8 of this exhibit.

16 A. (McCluskey) Yes.

17 Q. Doesn't it say on "Sources", "Capacity price forecast
18 developed by Levitan & Associates"?

19 A. (McCluskey) It does. And, --

20 Q. You testified last Tuesday, "PSNH didn't provide
21 information with who developed the capacity price
22 projection." Does that testimony appear to be correct?

23 A. (McCluskey) I believe my testimony was that Staff
24 initially asked for "any wholesale market energy price

1 projections and natural gas price projections reviewed
2 or considered by PSNH." That was the first question to
3 Staff 1-3. You just indicated you also provided some
4 capacity numbers. And, I think, in a subsequent
5 question, we also asked for "any capacity price
6 projections that the Company used in its analysis of
7 the PPA." And, the Company did provide some numbers.
8 Staff followed up several times. We wanted the report,
9 the background to the development of the prices.
10 Eventually, in Set 6, the Company stated that the
11 report submitted by Mr. Levitan is in the Least Cost
12 Plan proceeding. And, they state in that response that
13 the study that he did for the Company actually only ran
14 through 2020. It was only six years of the term of
15 this agreement. And, they state in the response that
16 they, the Company, asked Mr. Levitan to extend the
17 analysis, which he did, through to I believe 2025, and
18 then he just extended it further using some CPI index.
19 So, after three rounds of questioning on this issue,
20 the Staff still does not have in this docket the report
21 that Mr. Levitan developed. Nor do we have the
22 explanation and description of the methods that Mr.
23 Levitan used to extend the forecast developed for the
24 Least Cost Plan through to 2025. Even though, in the

1 response, the Company states clearly that he actually
2 did do a write-up explaining how the extension
3 happened. So, Staff still does not have the material
4 to analyze whether the price forecast is reasonable.
5 And, it's because of that we received that response to
6 the -- I think it is 6-5, Ms. Amidon?

7 MS. AMIDON: That's correct.

8 BY THE WITNESS:

9 A. -- 6-5, we received that response two weeks before
10 testimony was due. We simply did not have time to go
11 off and seek again from the Company the explanation for
12 the extension that we were looking for. So, had the
13 Company provided this, then most certainly we would
14 have addressed whether we thought the forecast was
15 reasonable.

16 BY MR. BERSAK:

17 Q. Your testimony last Tuesday was "They provided a price
18 projection, but didn't provide the analyses behind it,
19 who developed the projection, and any report associated
20 with it." Didn't you just see on the exhibit that the
21 consulting firm of Levitan was mentioned about five
22 times as to who developed the projection?

23 A. (McCluskey) But our question --

24 Q. That's an easy question. That's a "yes" or "no"

1 question.

2 A. (McCluskey) I don't think it is. And, this is the
3 answer, Mr. Bersak. The question was "what capacity
4 price forecasts were available to the Company for its
5 use in comparing -- in determining whether the PPA
6 prices that you were negotiating were reasonable?"
7 Those prices were negotiated in 2008. The Levitan
8 study, if you read the study, which I've now read, it's
9 clear that it couldn't have been filed with PSNH until
10 August of 2010. So, the study that Levitan did for the
11 Least Cost Plan could not have been the support for the
12 numbers that you're indicating in the response that
13 you've identified.

14 CHAIRMAN GETZ: Mr. Bersak, I need to
15 take stock of where we are. It's 10:30. And, it may be
16 time for a brief recess. We had been hopeful that we
17 would complete today, and I thought I had made clear
18 yesterday that we're going to -- we're going to need to
19 take a substantial break around noon. So, --

20 MR. BERSAK: I am trying, Mr. Chairman.

21 CHAIRMAN GETZ: How much --

22 MR. BERSAK: We are going at glacial
23 speed.

24 CHAIRMAN GETZ: I understand how we're

1 going. But how much more cross do you anticipate?

2 MR. BERSAK: At this speed, two, two and
3 a half more hours.

4 CHAIRMAN GETZ: Okay. Well, then, I
5 think we're going to take a brief recess. And, I would
6 suggest that the parties then talk during the recess about
7 when we would have an additional day of hearings, and how
8 we're going to wrap this up. Because we have to take a
9 substantial break to attend to other business at around
10 lunch time.

11 I do notice one other thing.
12 Mr. Edwards has submitted a closing statement in writing.
13 Does anybody have any objection or concern about that?

14 MR. BOLDT: I haven't seen a copy, but
15 --

16 MS. AMIDON: We haven't seen a copy, but
17 I'm assuming that he -- did he file it this morning or --

18 CHAIRMAN GETZ: Well, what he must have
19 done is submitted this to the general PUC website, so that
20 must be how it got circulated. So, we'll make it
21 available. But what he says at the beginning is "Staff
22 attorney has stated that due to the fact Edrest Properties
23 can not attend today's final hearing on the above
24 referenced docket, Edrest may submit to Staff attorney a

1 closing statement as follows." And, then, there's about a
2 page and a half. But we'll make it available. And, then,
3 I guess, after the break, you can tell if there's any
4 problem with it. Ms. Hatfield.

5 MS. HATFIELD: Thank you, Mr. Chairman.
6 Just to facilitate our discussion on an additional day,
7 does the Commission have a sense of your availability over
8 the next week or so?

9 CHAIRMAN GETZ: Next week is very
10 difficult. I think we may have to take a look at
11 schedules during --

12 MS. AMIDON: I recall, and excuse me for
13 interrupting, I recall February 22nd, I know that's
14 sometime in the future, but I recall that that date had
15 been available at one point.

16 CHAIRMAN GETZ: Because what we need to
17 address at this point is conclude cross, questions from
18 the Bench, redirect, I guess your -- a decision, it
19 doesn't sound like it's been reached on a request for
20 rebuttal witnesses, dealing with exhibits, if there's any
21 outstanding arguments about what should be admitted into
22 evidence, and then closings. I think that's what we need
23 to deal with. But let's take a brief recess in any event.

24 (Whereupon a recess was taken at 10:33

1 a.m. and the hearing resumed at 10:58
2 a.m.)

3 CHAIRMAN GETZ: Okay. Let me get back
4 to some of the procedural issues. Took a look at the
5 calendar, and think we can be available this Friday
6 afternoon, and as well as next Thursday. But let me
7 address some of the subsets of this, because I would
8 dearly love to complete this at least this week.

9 MR. BERSAK: Yes.

10 CHAIRMAN GETZ: So, two subsets of this.
11 One is the evidentiary issues. And, I think what we're
12 going to try to do now is go through from -- it's almost
13 11:00, go through to 1:00, and hopefully we'll be at a
14 place where we can then break for the day, rather than
15 have you all waiting around while we try to get some other
16 things done, come back Friday afternoon.

17 But, between now and then, if the
18 parties could talk about exhibits, so I'm not surprised,
19 and we don't go into a long discussion on Friday about
20 what's admitted and what's not admitted, if the parties
21 could at least narrow those issues down, so we'll know
22 what we're dealing with. And, you know, of course, best
23 case, there's full agreement on what's in and out.

24 The other thing is on closing

1 statements, whether to emulate Mr. Edwards and have
2 everyone put in a closing statement in writing, with a
3 pretty quick turnaround, because I don't want it turning,
4 you know, de facto into briefs.

5 MR. BERSAK: Right.

6 CHAIRMAN GETZ: So, those are the two
7 suggestions I have about the subsets. Does anybody want
8 to address these procedural issues in any way?

9 MS. AMIDON: I think that -- I think the
10 written closing sounds fine, and we would be agreeable to
11 -- Staff would be agreeable to a quick turnaround. You
12 know, I think, unfortunately, the Commission may end up
13 with some evidentiary issues. But, to the extent we can
14 resolve anything, we'll try to do that ahead of time, or
15 at least identify for the Commission what it is that we're
16 looking for.

17 MR. BERSAK: I was still hopeful that we
18 could actually complete this today, especially if we do
19 written statements in lieu of any kind of an oral closing
20 statement. I will do my best to not spare the horses and
21 move this thing along smartly. I can represent that it is
22 extremely unlikely that we are going to call any witnesses
23 back to the stand, so that would limit the need for that.

24 CHAIRMAN GETZ: Okay. Then, if there's

1 nothing else -- Ms. Hatfield.

2 MS. HATFIELD: Mr. Chairman, one issue
3 that has come up today is the public comment that we
4 heard, which, obviously, is not testimony and is not under
5 oath, but it does directly contradict testimony that PSNH
6 witnesses gave under oath, when I specifically asked them
7 about the \$27 wood price. And, I think the Company either
8 needs to be back on the stand to explain that or refute it
9 or they can provide that in writing. But it seems to me
10 we have, you know, two completely different pieces of
11 information about the Schiller wood price. And, I would
12 like to get more information on that. But, obviously,
13 it's up to the Commission, if they would like it.

14 CHAIRMAN GETZ: Okay. Well, I guess,
15 let me try to address that as directly as I can. As you
16 said, we have witnesses from the Company saying "X" under
17 oath, you have some other individual saying "Y" not under
18 oath. There's always the issue of how much weight that is
19 given. Even if they had been under oath and said "Y",
20 then it would be up to us to resolve any of the conflicts
21 in the testimony. I don't think it's a basis for
22 recalling. Because, if they had said "Y", I guess it
23 would have been after the PSNH, and there's still an issue
24 of weighing the evidence.

1 MS. HATFIELD: And, if I can just -- I
2 agree, and I thank you for that. I guess I would just add
3 that, if PSNH has anything additional on the issue, then
4 they have an obligation to bring it forward.

5 (Chairman and Commissioners conferring.)

6 CHAIRMAN GETZ: All right. Mr. Bersak.

7 MR. BERSAK: Yes, sir.

8 CHAIRMAN GETZ: Continue cross.

9 MR. BERSAK: Thank you.

10 BY MR. BERSAK:

11 Q. Mr. McCluskey, is it likely to expect any significant
12 new renewable generation to be built in New Hampshire
13 without a long-term PPA?

14 A. (McCluskey) I think -- I think it's reasonable to
15 assume that there's a need for a long-term PPA, not
16 actually 20 years, but there's certainly a need for a
17 PPA, certainly with respect to RECs. I don't think
18 it's -- I think New York had demonstrated that you
19 don't actually need a PPA with regard to energy and
20 capacity.

21 MR. BERSAK: I'd like to hand out what's
22 been marked -- we will mark it as "PSNH Exhibit Number
23 23", which is your response to PSNH Question -- Data
24 Request Number 30.

1 (The document, as described, was
2 herewith marked as PSNH Exhibit 23 for
3 identification.)

4 BY MR. BERSAK:

5 Q. We asked you the same question on data requests, about
6 "the need for a long-term PPA for renewable independent
7 power production." And, your response at that time you
8 were "unable to respond meaningfully to this question
9 without knowing the specifics of the renewable
10 generator (i.e., is it a wind facility, a solar
11 facility or a biomass facility), the term of the PPA,
12 whether [it's a] long-term PPA relates to all or some
13 of the products produced by such renewable generator."
14 Is that correct, Mr. McCluskey?

15 A. (McCluskey) Correct. And, I think that is by and large
16 consistent with what I just testified. I've, in my
17 oral response, I addressed the question of whether it
18 needs to be 20 years. You don't specify in your
19 question whether you're talking about a 20 year PPA.
20 You don't specify in your question whether you're
21 talking about the PPA applying to all of the products
22 or just to RECs. And, I've stated that, certainly,
23 with regard to RECs, I believe that's the case. But
24 not necessarily with regard to energy and capacity.

1 Q. I'd like to return to your testimony regarding the
2 Synapse Report on Page 27, Line 18. Where you stated,
3 "Because my analysis of above-market energy costs was
4 based on an energy market price forecast that is
5 approximately 30 percent lower than the energy price
6 forecast used by Synapse to calculate [its] premiums, I
7 have increased the Synapse REC price forecast for New
8 Hampshire by [that] same percentage." Do you see that?

9 A. (McCluskey) Page 27, what line?

10 Q. Line 18.

11 A. (McCluskey) Eighteen. Yes.

12 Q. That seems to indicate, as you testified earlier today,
13 that you relied on the Synapse Report to benchmark your
14 REC prices, is that correct?

15 A. (McCluskey) I started with the Synapse REC prices, and
16 made an adjustment to reflect the fact that, based on
17 my analysis, market energy prices have changed relative
18 to the prices that were in effect at the time the
19 Synapse study was conducted.

20 MR. BERSAK: Okay. I'd like to mark, as
21 our next exhibit, this number "24, "PSNH Exhibit 24", some
22 extracts from that Synapse Report, which you provided to
23 us in response to PSNH Data Request 1-22.

24 (The document, as described, was

1 the column captioned "Synapse Market REC Price
2 Projection". And, it appears that there are some minor
3 rounding errors, is that correct?

4 A. (McCluskey) Yes, I believe that's the case.

5 Q. Now, if you go right back to the Synapse Report,
6 following that table, the Synapse Report states "These
7 results are highly dependent upon the forecast of
8 wholesale electric energy market prices, including the
9 underlying forecasts of natural gas and carbon
10 allowance prices, as well as the forecast of inflation
11 used by SEA. A lower forecast of energy market prices
12 would yield higher REC prices than shown, particularly
13 in the long term." Okay. Do you see that inside the
14 report?

15 A. (McCluskey) Yes.

16 Q. Now, if you go to Page 1-6 of the Synapse Report, is it
17 true that Synapse says "The forecast REC premium is
18 based upon an estimate of the cost of new entry of
19 Class I renewables from 2012 onward and the forecast
20 annual wholesale electric energy price." Is that your
21 understanding?

22 A. (McCluskey) Yes.

23 Q. Thank you. Similarly, on Page 2-46 of the Synapse
24 Report, they state "Sustainable Energy Advantage, LLC

1 (SEA) estimate REC prices for new renewables RPS tiers
2 in the longer term (after 2012) based on their analysis
3 of the cost of new entry" -- or, "the cost of entry of
4 new renewable energy resources." Is that correct?

5 A. (McCluskey) Correct.

6 Q. And, then, we're trying to understand what they did in
7 the report, and we go turn to Page 6-40 of Synapse.
8 You see where it states "we assume that, after a few
9 years of transition, the price of renewable energy will
10 be set at the cost of new entry." Is that correct?

11 A. (McCluskey) That's correct.

12 Q. Then, finally, on 6-41, and I think we've set the stage
13 here, the Synapse Report states "For each generator, we
14 determined the levelized REC premium for market entry
15 by subtracting the nominal levelized value of
16 production consistent with the AESC 2009 projection of
17 wholesale electric energy prices from the nominal
18 levelized cost of marginal resources." Then, it's got
19 some bullets: "The nominal levelized cost of marginal
20 resources is the amount the project needs in revenue on
21 a levelized dollars per megawatt basis" --
22 "megawatt-hour basis." Second bullet: "The nominal
23 levelized value of production is the amount the project
24 would receive from selling its commodities (energy,

1 capacity, ancillary services) into the various
2 wholesale markets." And, the third bullet is "The
3 difference between the levelized cost and the levelized
4 value represents the additional revenue the project
5 requires to attract financing."

6 And, finally, "Unless the revenue from
7 REC prices can make up that difference, the project is
8 unlikely to be developed." Okay. Is that correct from
9 the Synapse Report?

10 A. (McCluskey) That's correct.

11 Q. Now, similarly, you had referred to the "New York
12 Energy Resource" -- "Research Development Agency, do
13 you recall that, a report that you put in I believe as
14 "Staff Exhibit Number 10"?

15 A. (McCluskey) Correct.

16 Q. Inside that report, it's not in the extracts that you
17 provided, but there's a provision inside there I'd like
18 to just read. I think it's basically similar to what
19 we just read from the Synapse Report. In that report
20 it says "RECS are considered the premium that a project
21 needs to receive in order for it to meet the target
22 ROI. At a fundamental level, investors evaluate the
23 other revenues and expenses that make up a project's
24 economics to determine the premium necessary to achieve

1 that ROI. RECs are the last piece of the financial
2 package for renewable energy. In essence, RECs are the
3 linchpin of renewable energy investments for most of
4 the United States. If REC revenues fail to make a
5 project's economics hold, then the project is not
6 built." Do you recall seeing that in this New York
7 report?

8 A. (McCluskey) I do.

9 Q. So, it appears that both the Synapse Report and the New
10 York Energy Research and Development Agency report use
11 the cost of new entry of a new generating facility to
12 determine the REC premium. That is, how much premium
13 above the other products, basically energy, is needed
14 so that the total equals the cost of new entry, is that
15 correct?

16 A. (McCluskey) No, I disagree with that.

17 Q. Why is that?

18 A. (McCluskey) Clearly, the modeling done by Sustainable
19 Energy Advantage uses a model which calculates the REC
20 price in the way that you just described. And, so,
21 these are model based prices. In New York, the REC
22 prices are the result of a competitive bid. The
23 report, the Summit Blue report, is describing the
24 mechanics of how the market works. How developers may

1 look at their costs, the revenue requirements for their
2 project, they look at -- they estimate what kind of
3 revenues they're going to get from the energy and
4 capacity markets. And, they recognize that, in order
5 to make it financeable, they're going to have to have a
6 bid price accepted that will make up that difference,
7 that peak efficiency. So, in New York, they're not
8 doing any modeling like it's done in the Synapse
9 Report. In New York, it's the real world. The REC
10 prices are established by competitive forces. Here,
11 we're going through -- "here", meaning the Synapse
12 Report, we're going through a modeling exercise.

13 So, while the theory behind both
14 approaches is the same, one is producing estimate of
15 prices, another one is producing real-world prices.

16 Q. Okay. And, it was -- the real-world prices were in New
17 York, is that correct?

18 A. (McCluskey) That's correct.

19 Q. And, the Synapse Report is, what I think we just said,
20 is based upon modeling?

21 A. (McCluskey) It's based on modeling. In New York, the
22 rubber hits the road there and the bidders need to put
23 in prices that are going to make their projects achieve
24 the target return. And, at the same time, they're

1 going to be lean enough in order to win the bid.

2 Q. Okay. So, in your analyses of RECs, did you utilize
3 the Synapse numbers or the New York numbers?

4 A. (McCluskey) Well, I've already testified that I used
5 the Synapse numbers.

6 Q. Okay. I just wanted to make sure. I just wanted to
7 make sure that we're on the same page. And, Synapse
8 said that, for their modeling, that they based their
9 analysis of REC prices on what's necessary for a
10 project to meet the cost of new entry, is that correct?

11 A. (McCluskey) Correct. That's essentially on Page 6-41,
12 the first bullet item that you mentioned, "the nominal
13 levelized cost of the marginal resource". In
14 regulatory parlance, that is the revenue requirement.
15 And, so, the modeler develops an estimate for each of
16 these resources what the revenue requirement is, then
17 they estimate what revenues that they're going to get
18 in the New England ISO market, and out pops the
19 required REC price from the model.

20 Q. You testified that your "analysis of above-market
21 energy costs was based on an energy market price
22 forecast that is approximately 30 percent lower than
23 the energy price forecast used by Synapse." Is that
24 correct?

1 A. (McCluskey) That's correct.

2 Q. And, then, you continued by testifying that, "Because
3 [your] analysis of above-market energy costs was based
4 on an energy market price forecast that's approximately
5 30 percent lower than the energy price forecast used by
6 Synapse to calculate in premiums, I have increased the
7 Synapse REC price forecast for New Hampshire by that
8 same percentage." Is that correct?

9 A. (McCluskey) That's correct. I'm trying to get the REC
10 prices to be consistent with the market energy prices
11 that I used for the above-market energy costs.

12 Q. So, if the energy price in Synapse was 8 cents, you
13 said you reduced that by 30 percent, and you thought
14 that the appropriate energy price would have been
15 5.6 cents, is that correct?

16 A. (McCluskey) Something to that effect, yes.

17 Q. And, if the REC price, say, was 2 cents, you increased
18 that price by 30 percent to get up to 2.6 cents. Would
19 that also be correct?

20 A. (McCluskey) That's correct.

21 Q. So, let's hypothetically suppose that the cost of new
22 entry for a development totals 100. I mean, it could
23 be dollars, euros, pounds, pick your currency; it's
24 100. And, let's assume that the components of revenue

1 necessary to make up that 100, cost of new entry are 80
2 for energy and 20 for RECs, so that the revenue stream
3 is a total of 100, meets the cost of new entry for that
4 developer. Do you understand the hypothetical?

5 A. (McCluskey) Yes.

6 Q. Okay. Now, suppose, as you did, that the energy price
7 is really 30 percent lower. So, instead of 80, your
8 energy price is 56, correct?

9 A. (No verbal response).

10 Q. But the total cost of entry is still 100. So,
11 according to Synapse, the REC premium would have to
12 rise to 44 to meet the cost of entry hurdle of 100 to
13 be met, because you're getting 56 from energy, you need
14 to make up the rest of the cost of entry, so the REC
15 premium would have to be 44, correct?

16 A. (McCluskey) Correct. Under this hypothetical.

17 Q. In your testimony, you said you adjusted the REC price
18 up by 30 percent, to accommodate your 30 percent
19 decrease in energy price?

20 A. (McCluskey) Correct.

21 Q. So, in my example, your calculation would raise the
22 energy price of 20, by your 30 percent increase, up to
23 26. When you add the energy price of 56, to your new
24 REC price of 26, you only get 82. 82 is insufficient

1 to meet the cost of new entry, and nothing would be
2 developed under that hypothetical, correct?

3 A. (McCluskey) Well, under this hypothetical, you said
4 that, of the \$100 of revenue requirements, 20 percent
5 was met through RECs and 80 percent through energy.
6 And, it's because you have that significant difference
7 that produces the results that you've just indicated.

8 Q. For your mathematics to work, would -- the energy price
9 and the REC price would have to be equal. Because, in
10 order to get to the cost of new entry of 100, if those
11 numbers -- if the REC price and energy price are not
12 equal, when you start taking percentages, you're doing
13 multiplication, when the formula is addition?

14 A. (McCluskey) Correct. And, I understand where you're
15 going. That is a -- in this hypothetical, that's an
16 important issue. But the technology is also important.
17 I think, behind your question is the technology that
18 was assumed in these calculations is a biomass
19 facility, where you would have a significant amount of
20 revenue coming from energy relative to RECs, with other
21 resources, for example, wind, that could be very
22 different. And, my understanding is that the vast
23 majority of the renewable resources that Sustainable
24 Energy Advantage was looking at were wind projects.

1 Why? Because that's where the majority of the resource
2 comes from. And, so, that will have a totally
3 different mix of REC and energy revenues in order to
4 cover the revenue requirement.

5 Q. Maybe. But the model, as we just discussed earlier,
6 that Synapse used is a premium above basically energy
7 price to meet the cost of new entry?

8 A. (McCluskey) For resources at the moment.

9 Q. Let's take a look at your Exhibit GRM-12, if you may
10 please. Let's turn this to real numbers.

11 MS. HATFIELD: Mr. Chairman, I apologize
12 in advance if I'm out of order. But the statute does not
13 require that -- it does not say anything about the "cost
14 of new entry". So, in the interest of time, it would be
15 most helpful, I think, if Mr. Bersak would focus on what
16 the statute requires. All of this testimony that goes to
17 the "cost of new entry", I don't believe that the
18 Commission considers that under 362-F:9. I understand
19 that it's an important point for the Company and for the
20 City and for Laidlaw, but I'm not sure if this is going to
21 be useful.

22 MR. BERSAK: If you'll indulge me for
23 four minutes, you'll see where I'm going.

24 BY MR. BERSAK:

1 Q. Take a look at GRM-12, Mr. McCluskey. Let's take the
2 first line, or "2014". You see the column "Adjusted
3 Market Energy Price Projection (dollars per
4 megawatt-hour)"?

5 A. (McCluskey) Correct.

6 Q. And, you see a price there of "\$53.12"?

7 A. (McCluskey) Correct.

8 Q. That is the energy price that you used for your
9 calculations, which you testified was 30 percent lower
10 than that used in the Synapse Report?

11 A. (McCluskey) That was based on various calculations that
12 I did. That was my conclusion.

13 Q. Okay. So, to get back to a full Synapse number, the
14 mathematics would be "divide this by 0.7", correct? If
15 you divide 53.12 by 0.7, you get up to an approximation
16 or maybe even exactly the Synapse energy level, which,
17 in that calculation, would bring you up to \$75.89 per
18 megawatt-hour. Would you accept that?

19 A. (McCluskey) Yes.

20 Q. According to the Synapse Report, as we discussed
21 earlier, the cost of new entry would equal the energy
22 price, plus the REC premium. Your Exhibit GRM-13
23 indicates that the Synapse REC price for 2014 was
24 \$28.62, in 2009 dollars, which you adjusted for a time

1 value of money up to \$32.38, in 2014 dollars, is that
2 correct?

3 A. (McCluskey) Correct.

4 Q. So, the total cost of new entry per Synapse in 2014
5 would be the time-adjusted REC price of \$32.38 per
6 megawatt-hour for the RECs, and \$75.89 per
7 megawatt-hour for energy, for a total of \$108.27 per
8 megawatt-hour. Correct?

9 A. (McCluskey) I accept that, yes.

10 Q. Okay. So, now, you decreased the energy by 30 percent
11 to get to that \$53.12 shown on your GRM-12. That's a
12 \$22.17 per megawatt-hour decrease from that Synapse
13 number that we calculated earlier, the \$75 one.

14 A. (McCluskey) No, I didn't decrease the energy prices.
15 These energy prices that are shown on Exhibit GRM-12
16 are the result of a different methodology. I've said I
17 used the methodology developed by PSNH, --

18 Q. True. I agree.

19 A. (McCluskey) -- and updated it. It's got no connection
20 with the prices that are in the Synapse Report.

21 Q. And, we accept that. But that price is 30 percent
22 lower than the equivalent price of Synapse, that was
23 your testimony?

24 A. (McCluskey) Correct.

1 Q. Okay. So, it's 30 percent less. And, that 30 percent
2 less is, in this particular case, for this particular
3 year, a \$22.17 difference from what Synapse would have
4 shown as an energy price, correct?

5 A. (McCluskey) Correct. My 30 percent was overall. It
6 wasn't --

7 Q. That's fine. We're just taking that as an example.

8 A. (McCluskey) It wasn't in reference to a particular
9 year.

10 Q. In your Exhibit GRM-13, you increased the 2014 figure
11 for RECs from "32.38" to "42.10", is that correct?

12 A. (McCluskey) Correct.

13 Q. That's an increase of only \$9.72. So, the shortfall
14 under the Synapse model to make up the cost of new
15 entry for RECs was \$22, you increased your REC price by
16 short of \$10. Leaving a developer far short of meeting
17 the cost of new entry, correct?

18 MS. AMIDON: Again, I think I would have
19 to object. "Cost of new entry" is not one of the criteria
20 in the statute.

21 MR. BERSAK: No, Mr. Chairman. Where
22 I'm going is that Mr. McCluskey inaccurately and
23 incorrectly adjusted the REC prices in his exhibits, which
24 affect all of his calculations. Instead of adjusting one

1 down by 30 percent and one up by 30 percent, as Mr.
2 McCluskey agreed the Synapse model is, they came up with
3 the REC premium by saying "here's how much it cost, 100,
4 to build a new plant. That's the cost of new entry. And,
5 you need to get to that 100. Mr. McCluskey has said, "I
6 don't agree with their energy prices. I'm reducing my
7 energy price by 30, by 30 percent." So, he made an
8 adjustment to increase the REC prices by 30 percent. But
9 that mathematics only works if the REC price and energy
10 price are equal, which they are usually not. What he
11 needed to do was figure out what the absolute difference
12 that he changed the energy price down to. Like in our
13 example, using his figure from 2014, where the difference
14 between his price and the Synapse price was a difference
15 in absolute dollars of \$22.17, he would have had to have
16 increased the REC premium by 22.17 in order to reach the
17 cost of new entry. By making this mathematical error, his
18 REC prices are wrong, and it goes throughout the entirety
19 of his testimony.

20 CHAIRMAN GETZ: Well, I'm going to
21 permit the inquiry along this line. And, I understand
22 your characterization of it. But we'll allow the
23 cross-examination on this issue.

24 BY MR. BERSAK:

1 Q. If you accept my mathematics, Mr. McCluskey, if you
2 look on GRM-13, where you have an "Adjusted Synapse
3 Market REC Price Projection" of "42.10", if you did
4 what Synapse called for in its model, to say that this
5 REC premium has to be enough to make up the cost of new
6 entry, that price should have been your original 32.38,
7 plus the \$22.17 difference in energy price, the
8 absolute difference, making the 2014 adjusted Synapse
9 market REC price \$54.55, is that correct?

10 A. (McCluskey) No. What we don't know here is what the
11 revenue requirement is for these particular projects.
12 The REC price is going to be established by that level.
13 So, if energy prices are lower, and you need a higher
14 REC price as a result of that, at the end of the day
15 the REC price is going to be capped by the revenue
16 requirement for the particular project. The market,
17 even though we're talking about a model here, the
18 market is going to ensure that the REC prices are not
19 going to exceed the revenue requirements for a
20 particular project.

21 Q. So, now you're rejecting the Synapse model, which you
22 just agreed was energy plus REC equals cost of new
23 entry. Just because the energy price decreases, does
24 not decrease the cost of new entry for a developer,

1 does it?

2 A. (McCluskey) It doesn't. And, what -- and, the unknown
3 here is the cost of new entry. And, so, what is not
4 known is what is required through the REC price in
5 order to meet the cost of new entry, which is defined
6 as the revenue requirement, plus the target return.
7 And, so, it doesn't actually follow that, if energy
8 prices -- if energy prices go down, there will be some
9 -- there will be some response with regard to the REC
10 prices. But it doesn't actually follow that there has
11 to be a one-to-one relationship. The revenue
12 requirement is what determines the final price.

13 Q. Sounds to me now that you're rejecting Synapse's model?

14 A. (McCluskey) Not at all. I'm not rejecting it.

15 Q. The energy price goes down, does that impact how much
16 it costs to develop a new plant?

17 A. (McCluskey) No, it doesn't. That's fixed.

18 Q. So, if that's the cost of new entry, if the energy
19 price goes down, and you need a sufficient revenue
20 stream to make it up, it's got to come from the REC?

21 A. (McCluskey) It does, to the extent that sum equals the
22 revenue requirement.

23 Q. And, if you assume that Synapse's cost of new entry
24 model is correct, you would need, in 2014, according to

1 the calculations, \$54.55 for a REC price. If you
2 compared 54.55 to the price of RECs under the PPA
3 that's before this Commission for approval, which is in
4 the first column of your Exhibit GRM-13, which is less
5 expensive? The REC price from Synapse, according to my
6 mathematics, or the PPA's price?

7 A. (McCluskey) Give me those figures again. The REC price
8 --

9 Q. The price of RECs under the PPA, according to your
10 tables, are \$53.80. The cost of the REC, according to
11 the Synapse cost of new entry model, would be \$54.55.

12 A. (McCluskey) According to your testimony.

13 Q. According to my calculations.

14 A. (McCluskey) And, based --

15 Q. I'll make it easy for you. Is \$53.80 less than \$54.55?

16 A. (McCluskey) Yes.

17 Q. Thank you. You testified earlier that the figures in
18 this exhibit and in -- that's Exhibit 13 and Exhibit 12
19 were used throughout your testimony to calculate your
20 over-market energy prices and your over-market REC
21 prices. Do you recall that testimony?

22 A. (McCluskey) I don't believe I said that. I said --

23 Q. You did. You also testified --

24 CHAIRMAN GETZ: Well, let him finish his

1 answer.

2 MR. BERSAK: I'm sorry.

3 BY THE WITNESS:

4 A. (McCluskey) I said that the adjusted market energy
5 prices we used to calculate the above-market energy
6 costs. And, the adjusted Synapse REC prices were used
7 to calculate the above-market REC cost. That, I
8 believe, was the extent of what I used these numbers
9 for. So, they weren't used throughout my testimony.

10 BY MR. BERSAK:

11 Q. Earlier today you talked about an "NSTAR proceeding",
12 where a Mr. James Daly testified in Massachusetts
13 before the DPU. Do you recall that?

14 A. (McCluskey) Yes.

15 Q. And, last Tuesday, you referred to testimony in that
16 DPU Docket 10-71, is that correct?

17 A. (McCluskey) Yes.

18 Q. You testified that Mr. Daly's testimony was about "the
19 winning bid from an open and competitive bidding
20 process." Is that correct?

21 A. (McCluskey) Correct.

22 Q. Do you know whether the winning bid was a biomass
23 plant?

24 A. (McCluskey) No. I think I said it was a wind project.

1 Q. That's correct. Let's go back to Mr. Daly's testimony
2 that you referred to last week and earlier today.
3 Isn't it true that, in that testimony, Mr. Daly
4 testified "The Company acknowledges that the contract
5 provides power at a price higher than its consultant's
6 forecast of market prices for conventional energy and
7 RECs"?

8 A. (McCluskey) Could you give me a reference.

9 Q. That would be Mr. Daly's testimony, Page 3, Line 15.

10 A. (McCluskey) That's correct. That's what it says.

11 Q. Isn't it also true that Mr. Daly testified on Page 9,
12 Line 7, of his testimony, "Any delay in approving the
13 contract would jeopardize the project's ability to
14 qualify for the tax credit, resulting in either the
15 inability to finance the project or increase prices to
16 ratepayers if the project had to rebid in a later RFP."

17 A. (McCluskey) Page 9, line what?

18 Q. Seven.

19 A. (McCluskey) Line 7. Yes, that's what it says.

20 Q. And, is it also true, on Page 9, later on, at Line 22,
21 Mr. Daly testified that "DOER's", which is the
22 Department of Energy Resources, "predominant concern is
23 that the multitude of potential intervenors may
24 compromise the legislative objective of an expeditious

1 process for the approval of long-term contracts to
2 facilitate the financing of renewable energy
3 generation."

4 A. (McCluskey) That's what it says.

5 Q. Mr. Daly goes on, on Page 24, Line 5, testifying
6 "Overall, the costs for energy and RECs under the
7 contract are higher than market prices by \$12 million
8 nominal over the life of the contract." Isn't that
9 correct?

10 A. (McCluskey) That's correct.

11 Q. And, you testified earlier, this is for a wind facility
12 and a 10-year contract, is that correct?

13 A. (McCluskey) That's correct.

14 Q. And, wind has a substantially smaller capacity factor
15 than biomass, is that correct?

16 A. (McCluskey) Yes.

17 Q. Isn't it finally true that, in Mr. Daly's testimony,
18 that he compared the price of the NSTAR deal to the
19 alternative compliance price, testifying on Page 25,
20 Line 3, "The costs for energy and RECs under the
21 contract are lower than the energy and ACP for the
22 entire term of the contract by \$31 million nominally.
23 The ACP rate is the amount that customers are required
24 to pay in the event there are insufficient RECs in the

1 marketplace to satisfy the RPS. The ACP could be
2 regarded as the maximum customers should be expected to
3 pay for RECs over time. Forecasts of supply and
4 demands for RECs vary. However, as a threshold issue,
5 should the market be in shortage, due to the inability
6 to supply enough RECs, this contract will serve as a
7 hedge against such exposure, thereby reducing ratepayer
8 costs versus paying the ACP. By this measure also, the
9 contract is cost-effective." Is that correct?

10 A. (McCluskey) That's correct.

11 Q. Do you understand Mr. Daly's point that, if RECs are in
12 short supply, and the price of RECs goes up to the ACP,
13 that a contract locking in prices of RECs at less than
14 that ACP value could serve as a hedge against paying
15 full ACP prices?

16 A. (McCluskey) That's correct. And, hedges are not
17 necessarily least cost. And, it's quite possible that
18 the Company would be entering into a hedge and
19 substantially overpaying for the product relative to
20 the actual market price.

21 Q. You recall yesterday we discussed how your old
22 employer, LaCapra, stated that "one of the purposes of
23 an RPS Program is to act as a hedge against price
24 volatility"?

1 A. (McCluskey) I think any long-term contract with fixed
2 prices is going to have a hedge. You don't have to
3 have a renewable resource behind it to do that.

4 Q. If you were to compare the \$31 million figure testified
5 to by Mr. Daly for the NSTAR contract, that is, if REC
6 prices were at the ACP for the duration of the
7 contract, under the Laidlaw PPA, would you be surprised
8 to learn that the cost for energy and RECs are
9 estimated to be lower than the energy and ACP by over
10 \$256 million nominal?

11 A. (McCluskey) Could you give me that question again.

12 Q. Can you recall the \$31 million figure that Mr. Daly
13 testified to on Page 25, Line 3?

14 A. (McCluskey) Yes. Yes.

15 Q. Would you be surprised that a similar number, if
16 calculated for the Laidlaw PPA before this Commission,
17 would be \$256 million?

18 A. (McCluskey) Well, I can't comment on that. I don't
19 know what the assumptions are.

20 Q. Do you also recall you testified that the NSTAR process
21 was superior, because "NSTAR's customers are not
22 obligated to pay in the event of a change in the
23 Massachusetts RPS law"?

24 A. (McCluskey) I don't recall saying that it was

1 "superior". I certainly did identify the particular
2 provision in Mr. Daly's testimony, the particular
3 statement in Mr. Daly's testimony which says that
4 "customers are not at risk if the law is changed."

5 Q. Let me go back to the transcript and make sure I wrote
6 it down correctly. "Answer: (McCluskey) Yes. Mr.
7 Daly's testimony to the DPU stated that NSTAR's
8 customers are not obligated to pay for RECs if, as a
9 result of a change in law, the facility fails to
10 qualify as a Class I resource." Is that correct?

11 A. (McCluskey) Is that a question?

12 Q. Do you recall that testimony?

13 A. (McCluskey) Yes.

14 MR. BERSAK: I'd like to mark as the
15 next PSNH exhibit an extract from the Massachusetts Code
16 of Regulations. That would be "25", "PSNH Exhibit 25"
17 please, Mr. Chairman.

18 (The document, as described, was
19 herewith marked as PSNH Exhibit 25 for
20 identification.)

21 BY MR. BERSAK:

22 Q. PSNH 25 is from 220 CMR, and it says on the top
23 "Department of Public Utilities".

24 MS. AMIDON: Mr. Chairman, where are we

1 in terms of exhibit numbers, because I seem to have lost
2 track of 22 and 23?

3 MR. BERSAK: 23 was the response to PSNH
4 Data Request 30 from Mr. McCluskey. And, --

5 MS. AMIDON: Mr. Chairman, I just -- I'm
6 looking at this document that PSNH just proffered, and I'm
7 not sure how it's relevant to this proceeding. It looks
8 like it's something from another jurisdiction.

9 CHAIRMAN GETZ: Well, let's hold off for
10 one second here. Let's straighten out one thing at a
11 time. So, you asked for what's Exhibit 22 and 23 marked
12 for identification. I have, as "Exhibit 22", is the
13 responses under a heading of a letter dated "October 18",
14 from Mr. Labrecque.

15 MR. BERSAK: That's correct, Mr.
16 Chairman.

17 CHAIRMAN GETZ: And, "23" I have as
18 Request PSNH-30, regarding the long-term PPA. And, then,
19 "24" is the Synapse extract. And, then, "25" would be
20 this extract from the Mass. statutes.

21 MR. BERSAK: That's correct.

22 CHAIRMAN GETZ: And, now, you're raising
23 a question about the relevance of this?

24 MS. AMIDON: Correct. Because this is a

1 New Hampshire proceeding, I'm not sure how regulations for
2 the Department of Public Utilities for Maine --
3 Massachusetts could be relevant to this proceeding.

4 CHAIRMAN GETZ: And, let me just
5 correct, I said "statute", apparently, they're rules.

6 MR. BERSAK: That is correct.

7 MS. AMIDON: That's correct. Rules for
8 Massachusetts.

9 CHAIRMAN GETZ: And, Mr. Bersak,
10 response?

11 MR. BERSAK: The response is that Mr.
12 McCluskey testified how superior the results in the
13 contracting process in Massachusetts was, and why one of
14 the things that's better in Massachusetts is that they
15 have the ability there to protect customers from risks in
16 change of the RFP law. And, as an offer of proof, if you
17 take a look on the second page of that exhibit, under
18 Section 17.08 of the Mass. DPU's regulations, under (3),
19 it says that "If RPS requirements terminate, a
20 distribution company's obligation to solicit long-term
21 contracts shall also cease. However, contracts already
22 executed and approved by the Department will remain in
23 full force and effect." Which seems to be somewhat
24 different from Mr. McCluskey's testimony and understanding

1 about the risks that are borne by Massachusetts customers
2 under the NSTAR process and what the risks are to
3 customers under the PPA that's been provided to this
4 Commission for approval.

5 WITNESS McCLUSKEY: Could I comment on
6 that, Mr. Chairman?

7 CHAIRMAN GETZ: Well, first, I need to
8 overrule your -- the objection by your counsel, and permit
9 inquiry along these lines. So, now you may respond.

10 MR. BERSAK: There's no question yet,
11 though.

12 CHAIRMAN GETZ: Was he anticipating your
13 question?

14 MR. BERSAK: Let's see how good you are.
15 It's like Carnac. Okay. I'll just ask the question.

16 BY MR. BERSAK:

17 Q. Are you aware of this provision of the Massachusetts
18 regulations?

19 A. (McCluskey) I am now.

20 Q. You are now. Okay. Thank you. So, it appears that
21 that successful competitive program that you've
22 testified about in Massachusetts apparently places the
23 risk of a change in RPS laws on customers, correct?

24 A. (McCluskey) My testimony, are you saying? "The risk is

1 placed on the developer" is what I testified to.

2 Q. Yes. But this regulation shows that, if a contract is
3 in force and effect, a change in law will not affect
4 that contract, and that contract will continue despite
5 the change in law?

6 A. (McCluskey) That's what that says. But what I'm saying
7 is that the contract that was entered into with the
8 wind facility apparently had a provision which said
9 that that risk would be borne by the developer. And,
10 so, if that is, in fact, the case, I can't find in the
11 testimony at the moment the reference to this risk.
12 But I'm assuming that NSTAR entered into a contract
13 which places that risk on the developer. And,
14 according to this regulation, that that contract will
15 remain in full force and effect if the RPS terminates.

16 Q. Isn't it true that under Massachusetts Green
17 Communities Act that the DPU and Mass. DOER shall
18 "provide for an annual remuneration for the contracting
19 distribution company equal to four percent of the
20 annual payments under the contract to compensate the
21 company for accepting the financial obligation of the
22 long-term contract, such provision to be acted upon by
23 the Department of Public Utilities at the time the
24 contract is up for approval"?

1 A. (McCluskey) I'm not familiar with the particular
2 regulations. But I'm certainly familiar with this
3 issue from my reading of certain documents in the Cape
4 Wind proceeding. This was a big issue in that
5 proceeding. So, yes, that's my understanding. That
6 the utility can profit from entering into such
7 contract.

8 Q. Is there any such profit or remuneration built into the
9 Laidlaw PPA for PSNH?

10 A. (McCluskey) No. Other than the potential, at the end
11 of the 20-year term, for the Company to place into rate
12 base the generation asset.

13 Q. Finally, Mr. McCluskey, do you recall testifying in
14 Docket Number DE 09-137, that's Unitil's petition for
15 approval of investment in and rate recovery of
16 Distributed Energy Resources?

17 A. (McCluskey) I did testify in that proceeding.

18 Q. And, that proceeding, the hearing of that took place
19 less than a year ago, is that correct? March 3rd,
20 2010, subject to check?

21 A. (McCluskey) Subject to check, yes.

22 Q. In that proceeding, didn't you testify that "Staff
23 assumed that the price of RECs would rise from the
24 existing level at the rate that the ACP rose"?

1 A. (McCluskey) I don't believe -- I don't recall
2 testifying to that. The actual market price, is that
3 what you're saying that I testified --

4 Q. I'm just reading from your testimony, Mr. McCluskey.
5 "Staff assumed that the price of RECs would rise from
6 the existing level at the rate that the ACP rose."
7 That testimony, if, in fact, you made it, is 180
8 degrees different from the steadily decreasing REC
9 prices upon which you based your calculations in
10 Exhibit GRM-13 in this proceeding, isn't that correct?

11 A. (McCluskey) If that's what I said, for the purpose of
12 some calculation, then that's what I said. It doesn't
13 actually mean that the resulting prices, REC prices are
14 higher in the DER proceeding. If you start from a low
15 level, and increase them by a certain percentage, I can
16 tell you now that they are going to be considerably
17 lower than the REC prices that are in the PPA.

18 MS. AMIDON: Mr. Chairman, it might be
19 helpful if Mr. McCluskey had the context of that
20 statement, because it was one sentence read out of I think
21 quite extensive testimony that he filed in that docket.
22 And, I think the analysis that he did in this docket -- in
23 that docket is not comparable or transferable to this
24 docket, without him having a chance to examine the

1 context. That would be my opinion.

2 MR. BERSAK: It would seem that prices
3 are either going to go up or going to go down, I don't
4 think it needs a lot of analysis. But, Mr. Chairman, I am
5 done. Thank you very much. Thank you, Mr. McCluskey.
6 Thank you, Mr. Frantz.

7 WITNESS McCLUSKEY: Thank you.

8 CHAIRMAN GETZ: Commissioner Below.

9 BY CMSR. BELOW:

10 Q. Mr. Frantz, do you have a reason to believe that
11 Laidlaw's direct economic impact, as stated in the Site
12 Evaluation Committee proceedings and as used by
13 Dr. Shapiro in her testimony, rebuttal testimony, were
14 inaccurately stated?

15 A. (Frantz) Not inaccurately stated. I'm sure they were
16 stated correctly. Whether the actual effects will be
17 what's the -- whether the full effects that are
18 mentioned in that testimony I think are questionable.

19 Q. I believe you testified that you questioned her
20 rebuttal testimony to the effect that, when you account
21 for the economic impacts of the Laidlaw development,
22 both the development stage and the ongoing, that that
23 more than offset the negative impacts that you had
24 described in your direct testimony, concerning the

1 increase in rates above market, based on Mr.
2 McCluskey's estimate of those above-market costs. And
3 that, in your response to a question, you indicated
4 that you believe that Dr. Shapiro's calculation would
5 change, if those numbers were changed from the SEC
6 proceeding, what was stated in the SEC proceeding. So,
7 I guess I'm trying to understand, were you asserting or
8 saying that there would be otherwise, that you
9 otherwise have reason to disagree with her conclusion
10 in her rebuttal testimony, other than what the
11 assumptions are that went into that?

12 A. (Frantz) No. No.

13 Q. Okay. And, on Page 6 of your direct testimony, at
14 Lines 5 and 6, you stated that "Dr. Shapiro makes no
15 provision for the fact that this contract's prices are
16 above market", and then proceed at Line 9 to say "Based
17 on Mr. McCluskey's testimony". I presume you -- is it
18 fair to say that you were using the word "fact" in sort
19 of a figurative way, in terms of a forecast, or are you
20 stating just as a fact that, as of today, the
21 contract's prices are above market?

22 A. (Frantz) It was probably a word that could have been --
23 a different word probably would have been perhaps
24 better. But, based on Mr. McCluskey's analysis, which

1 I think we spent a lot of time on here, to the extent
2 it's above market, that would certainly affect the
3 results of the economic model. Whether that's a fact
4 or not, I think it's a little too early to tell.

5 Q. Okay. And, I think, on that topic, sort of a question
6 for both of you. When we're trying to make a judgment,
7 either the Commission or Staff or the Company, about
8 the future, and whether an action today is prudent or
9 in the public interest or a wise decision today, is it
10 your belief that you need to do some forecasting of
11 various future events, prices, and that it makes sense
12 to do a range of forecasts, based on various plausible
13 assumptions, in order to test the reasonableness of a
14 proposed action?

15 A. (Frantz) That's normally what happens. And, Mr.
16 McCluskey can jump in. But, normally, you'd look at a
17 forecast, you have a base forecast, and then you run
18 scenarios around that forecast. And, give some
19 sensitivity to and a comfort level to those numbers to
20 that forecast.

21 A. (McCluskey) And, if I could add. Another question was
22 to deal with forecasts, but there are several standard
23 tests that can be employed to determine whether
24 something is cost-effective. Forecasting of energy and

1 REC prices are just one of the tests that I used.
2 Comparing with other projects is another standard
3 approach that's referred to as a "comparables
4 approach". Doing financial analysis of projects like
5 this is another well-documented approach.

6 In Vermont, for example --

7 (Court reporter interruption.)

8 BY THE WITNESS:

9 A. (McCluskey) In Vermont, any renewable project is
10 actually fully rate regulated in that state. They
11 don't use competitive bids, they don't have bilateral
12 negotiations. They essentially hand out long-term
13 contracts to specific projects, and they develop the
14 appropriate prices for different technologies based on
15 cash flow analysis of the type that were described in
16 my testimony. And, so, they're using estimated inputs
17 for the main variables. The goal being to ensure that
18 the developer gets a targeted -- can achieve a targeted
19 rate of return. So, there are different approaches.

20 With regard to the forecasting, it is
21 common to do sensitivity analysis. But sensitivity
22 analysis is only as good as the assumptions that go
23 behind it. Sometimes it's complicated. If you have
24 several variables, which are behind the development of

1 a forecast, and if you start to look at something other
2 than the base case assumptions, the thing can become
3 very complicated very quickly. So, while that is done,
4 the other approach is to just use a base case forecast
5 and supplement it with different tests.

6 BY CMSR. BELOW:

7 Q. Well, I guess I'm still a bit confused about what your
8 response to Mr. Bersak, relative to GRM-12 and 13,
9 where I think you suggested you started with the
10 Synapse numbers for estimating REC prices for purposes
11 of developing a forecast, and you adjusted those based
12 on adding 30 percent after having developed a set of
13 energy price numbers that turned out to be
14 approximately 30 percent lower than the Synapse
15 numbers.

16 A. (McCluskey) Uh-huh.

17 Q. And, you were suggesting that this was consistent with
18 the Synapse forecasting model, but then you seem to
19 disagree as to applying the methodology used in the
20 Synapse model of taking the cost of new entry,
21 subtracting out energy revenue, to come up with a
22 forecast of the REC price for new entry?

23 A. (McCluskey) Yes. I'm not questioning the Synapse
24 model. All I'm doing in Exhibits 12 and 13 is, because

1 the market energy prices were developed using a
2 different methodology, we didn't use the market energy
3 prices from the Synapse study, we used a different
4 methodology. And, we updated the methodology to
5 reflect reasonably current NYMEX prices. So, we have a
6 set of market energy prices that are based on
7 reasonably current inputs. And, then we have a set of
8 REC prices from the Synapse model, which are based on
9 -- which one of the factors that goes into developing
10 those are the wholesale prices. And, I recognize that
11 there is a difference between the wholesale prices that
12 we used to develop the REC prices in the Synapse model
13 and the prices that I've used to develop the
14 above-market energy costs. So, I just felt, to have
15 consistency in the two calculations, that there was a
16 need to make an adjustment to the Synapse REC prices.
17 And, the adjustment I made was 30 percent.

18 Q. Would you consider another reasonable way to make that
19 adjustment to be to take the -- your adjusted market
20 energy price projection, to give a delta between that
21 and the Synapse energy price projection, and apply that
22 difference to the Synapse market REC price to come up
23 with an adjusted Synapse REC price?

24 A. (McCluskey) That's a possibility. I'll certainly

1 consider that. And, perhaps we can address this on
2 redirect. That's something I will -- I'll consider.

3 Q. So, you would consider that that might be a reasonable
4 alternative?

5 A. (McCluskey) That -- well, whether it's a reasonable
6 alternative will depend on after I give it some
7 consideration.

8 Q. Okay. I believe -- what was the migration rate you
9 assumed for your analysis?

10 A. (McCluskey) The migration rate was used to address the
11 issue of REC need. What I used there was the only
12 figure available, was the 31 percent that PSNH had
13 testified to I believe in the migration docket. And,
14 at the time I wrote my testimony, 31 percent was the
15 only figure that Staff had available. So, I did that
16 analysis assuming that the migration rate would stay at
17 31 percent over the term of the PPA.

18 Q. And, Mr. Sansoucy I think testified that he thought
19 that was at or near the upper limit, in terms of
20 elasticity, that most of the customers who had had the
21 inclination or ability or scale to migrate, had likely
22 already migrated. And, I think he testified that he
23 didn't think that would go much higher. Do you have a
24 view as to whether -- do you agree with that or

1 disagree as to whether there's an upper limit to the
2 price elasticity of Default Service customers migrating
3 to competitive supply, to the extent there's a
4 difference between Default Service price and
5 competitive alternatives?

6 A. (McCluskey) Well, I think I've got two answers. The
7 first one is a factual answer. As I testified today or
8 the day before, I forget which, we recently received
9 the quarterly reports from PSNH on migration. And, in
10 the month of October, the rate has gone up to
11 34 percent. In the month of November, it had gone up
12 to almost 35 percent. And, although the report
13 indicated that it had gone up to almost 36 percent in
14 December, we noted that seemed to be a calculation
15 error in the report. And, we've been in touch with the
16 person that submitted the report, and they have
17 recalculated the number for December, and it appears to
18 be 32.5 or in the 32 range. So, we already have data
19 from the Company which shows that the 31 percent
20 assumption that I used has been exceeded.

21 Now, is it going to continue on that
22 path? I think that's where your question is going. It
23 seems to me, it's very dependent on where the Energy
24 Service rate is going to go, relative to the market

1 price of energy. And, if it continues to diverge, then
2 one would expect that many more of the C&I customers
3 that have not yet migrated will potentially migrate.
4 And, if, and again it's getting to your question of
5 elasticity, if the difference in the energy rate
6 relative to the market continues to diverge, I believe
7 there will come a time where the markets will begin to
8 offer products that are attractive for even the small
9 customers, residential, certainly small commercial
10 customers. And, to assume that those customers are
11 always going to be captive to PSNH, while the energy
12 rate is diverging from the market, to me, is just not
13 realistic. I believe the market will begin to offer
14 products that will potentially result in higher
15 migration rates. That's just my opinion. But it's
16 based on the assumption of a diverging energy price
17 from the market. I don't know whether it's going to --
18 whether the energy price is going to continue to
19 diverge or it's going to close that gap, who knows
20 where that's going to go. But we know there are
21 significant costs to be borne by Energy Service
22 customers, as the result of the Merrimack upgrade, and
23 I think as a result of this particular contract.

24 These types of projects are going to

1 increase the average cost-of-service for Energy Service
2 customers, absent some other change. I have not spent
3 a lot of time addressing PSNH issues. But I do recall
4 from a few years back that PSNH had a significant open
5 position, meaning that it needed to buy energy from the
6 competitive market. And, if the competitive market
7 prices are generally lower, that has a tendency to keep
8 down the energy price. But I'm now told that that gap
9 has shrunk considerably, that it buys relatively small
10 amounts of energy from the market. And, it's
11 essentially providing most of the service to its Energy
12 Service customers out of its own resources and contract
13 -- long-term contract costs. So, there doesn't seem to
14 be a lot of opportunity for the lower market prices to
15 put a brake on the increase in the Energy Service rate
16 as used to be the case.

17 Q. On Page 14, at Line 13 of your testimony, you spoke of
18 the "expected future market prices for Class I RECs".
19 And, I just wondered if you could explain what you
20 meant by "expected"?

21 A. (McCluskey) I was referring to the Synapse study.

22 Q. Inasmuch as you expect, do you expect those to be the
23 prices or are you just making a reference to a forecast
24 that you were using?

1 A. (McCluskey) Obviously, we don't know what the future
2 is. But the Synapse has developed this projection of
3 where prices are going to go. And, absent any other
4 information in this analysis, that would be my expected
5 future price.

6 Q. Okay. On Page 16, at Lines 14 and 15, you said "For
7 every dollar increase in the price of wood, I estimate
8 Laidlaw will collect an additional \$113,000 per year."
9 Is that a gross amount or net amount?

10 A. (McCluskey) Gross? What do you mean by "gross"?

11 Q. Gross, just gross revenue, or net of increasing
12 expenses?

13 A. (McCluskey) Well, there's no expense behind this. My
14 point is that, they're using a conversion factor which
15 is higher than what they should have based on the
16 characteristics of the plant. And, so, they -- using
17 this conversion factor, it simply increases the
18 revenues. There's no offsetting expense. So, it's
19 actually -- this is net profit.

20 Q. Well, what do you mean by a price -- "in the price of
21 wood"? Their price of wood or the price at Schiller?

22 A. (McCluskey) This is the -- the prices in the PPA are
23 based on Schiller costs. They're not based on Laidlaw
24 costs at all. And, so, here this conversion factor of

1 1.8 is used to determine the prices that Laidlaw is
2 going to charge PSNH.

3 Q. So, if the PSNH price goes up a dollar, are you
4 estimating that Laidlaw will collect an additional
5 113,000 per year gross or net of their expenses?

6 A. (McCluskey) No. This, what I'm stating here, is not
7 related to the increase in the fuel cost. It's the
8 fact that they're using a conversion factor. So, let's
9 say it did go up a dollar.

10 Q. What goes up a dollar?

11 A. (McCluskey) The fuel cost goes up a dollar per ton.

12 Q. At Schiller or to Laidlaw?

13 A. (McCluskey) At Schiller.

14 Q. Okay.

15 A. (McCluskey) Okay? Schiller is the only one that counts
16 here. It's irrelevant what Laidlaw's fuel costs are.
17 So, if the fuel price goes up a dollar, first of all,
18 they're going to recover that one dollar per ton, but
19 they're going to recover it through a dollar per
20 megawatt-hour figure. So, they need to convert from a
21 dollar per ton to a dollar per megawatt-hour. And,
22 they are using a conversion factor which is not, in a
23 sense, cost-based. It's not based on the
24 characteristics of the facility. And, so, that

1 increment, I said it should be "1.55", they, in the
2 PPA, they're actually using "1.8". That increment from
3 1.55 to 1.8 produces \$113,000 per year for every dollar
4 increase.

5 Q. So, you're making some assumptions about what the cost
6 of wood to Laidlaw is to make that calculation. That's
7 not the gross increased payment from PSNH to Laidlaw,
8 but rather your estimate of their net increase in
9 profits?

10 A. (McCluskey) Associated just with having a 1.8
11 conversion factor, instead of a 1.55 conversion factor.

12 Q. But I'm still confused. Are you assuming that their
13 underlying cost of wood moves at the same,
14 proportionally to the cost of wood at Schiller? I
15 mean, how would you know this, for instance, if their
16 cost of wood increased at double the rate that it
17 increased at Schiller? How would you know that this
18 would be their increase in profit?

19 A. (McCluskey) Okay. I see what you're saying. So, what
20 I'm stating here is that the increase in revenue is
21 113,000. You've raised the question of "what are the
22 actual costs for Laidlaw for its fuel costs?" And, the
23 answer that has been given to that question is, we
24 don't know, because that's a Laidlaw document, which we

1 were not allowed to see. And, in fact, I have seen the
2 document, but I can't tell you what it says. And,
3 that's the problem. I know how Laidlaw's fuel costs
4 are priced. And, I can tell you my calculation is
5 correct.

6 Q. So, just to be clear again, are you assuming that
7 Laidlaw's actual cost of wood moves in a way that's
8 similar to the actual cost at Schiller?

9 A. (McCluskey) I was not assuming that. I think maybe it
10 was the wrong word to use when I said "additional
11 income". Additional revenue is what is going to be
12 produced. The answer to the question about "well,
13 what's the additional income?" Depends on how
14 Laidlaw's fuel prices have moved relative to Schiller.
15 If they go down, then the net income for Laidlaw is
16 greater than this amount. If they go up, relative to
17 Schiller, it's less than this amount. Since we don't
18 have Laidlaw's pricing in the record, we can't really
19 add any more. But I am just saying my number is
20 correct.

21 Q. On Page 20, at Line 18, when you're referencing what
22 will determine the value of the facility at the end of
23 the contract, you say "whether New Hampshire's RPS
24 continues to exist."

1 A. (McCluskey) Page 18, line what?

2 Q. Page 20, Line 18.

3 A. (McCluskey) Page 20.

4 Q. Might it be more accurate to say "whether New Hampshire
5 or other states where the output might qualify whether
6 their RPS continues to exist"?

7 A. (McCluskey) I think that's correct. There are other
8 ways to sell the product after the 20-year term.

9 Q. Okay. Do you make a distinction between "independent
10 power producers" and "merchant generators"?

11 A. (McCluskey) A "merchant generator", in my mind, based
12 on the research that I've done, is an independent power
13 producer that doesn't have a long-term contract. They
14 are fully exposed to market pressures for the products
15 that they produce. So, if this IPP has a contract,
16 long-term contract that reduces those volatility risks,
17 then it's not classified as a "merchant power plant".

18 Q. By whom?

19 A. (McCluskey) Several sources. But there was a book that
20 I read, and I can provide the Commissioners, if you
21 want it. It's called "Merchant Power Plants - The
22 Basic Guide".

23 Q. And, so, that's sort of your source of the definition
24 of "merchant power plants" that you referred to on Page

1 32, Line 11?

2 A. (McCluskey) No. There are various other, lots of
3 articles on the Web about merchant power plants, and
4 the risks that they're exposed to.

5 Q. But you're saying, by definition, they do not have
6 long-term power purchase contracts? I mean, might they
7 have some contracts for their output?

8 A. (McCluskey) Yes. That was the definition that was
9 provided in this source that I mentioned. And, you
10 have full shades of gray. Some of the products, a
11 portion of the output, sometimes it's sold under
12 contracts. There are lot of --

13 (Court reporter interruption.)

14 BY THE WITNESS:

15 A. (McCluskey) Some of the products produced by these
16 merchant facilities can be sold under long-term
17 contracts, and we're talking about a small percentage.
18 Some of it, the products are sold in the competitive
19 market. Sometimes all of the particular products are
20 sold in the competitive market, and sometimes a
21 particular product is sold on a long-term contract.
22 Some people refer to those still as "merchant power
23 plants". But I think what's clear is that, if all of
24 the products of the power plant are sold under

1 long-term contracts, it's not a merchant power plant.

2 CMSR. BELOW: Okay. That's all.

3 CHAIRMAN GETZ: Commissioner Ignatius.

4 CMSR. IGNATIUS: Thank you. Good
5 afternoon.

6 WITNESS McCLUSKEY: Good afternoon.

7 BY CMSR. IGNATIUS:

8 Q. Do either of you know if we have in the record here
9 figures on recent wood prices at Schiller? I confess,
10 I've lost track. Things that might look at annual
11 averages or historic averages going back since Schiller
12 began operation in 2006?

13 A. (McCluskey) Yes. We have a Staff -- in the Staff
14 exhibits, I believe these numbers may have -- exhibit
15 numbers may have changed, but I've got Staff Exhibit
16 11. And, the first page is titled "Schiller Wood
17 Cost". Do you have that?

18 Q. Yes.

19 A. (McCluskey) No, these are not -- these are not
20 confidential numbers. So, there's two pages. The
21 basic data is on Page 2. This is a discovery response
22 from PSNH. So, it lists, since the time that Schiller
23 was converted to wood, lists the -- generally, the
24 quarterly. There's a -- apparently, it converted in

1 December of '06, so we have that first month, then give
2 quarterly prices. Then, if you go to the first page, I
3 calculate a simple average of the last three years,
4 excluding the fourth quarter of 2010, because we don't
5 have that information at this point. So, it's showing
6 "\$33.73" per ton.

7 Q. I wonder, in the exhibit that has been through a couple
8 of iterations, and we most recently saw it as a PSNH
9 Exhibit Number 19, I believe.

10 A. (McCluskey) Uh-huh.

11 Q. That plotted additional points on what you had added in
12 your Staff 15, which, in turn, added to something that
13 PSNH had first created. It used the Concord Steam wood
14 prices historically 2003 to 2010 and plotted those
15 numbers in the hearing yesterday. Schiller wasn't
16 operational in 2003, but the first numbers you have in
17 your Staff Exhibit 11 begins in 2008. If you were to
18 plot what the energy prices would be under the PPA
19 using the Schiller wood prices for the averages for
20 2008, 2009, and 2010, well, first of all, could you do
21 that? Is that something that could be plotted?

22 A. (McCluskey) Commissioner, we've anticipated your
23 question. We already have that developed. And, it was
24 our intent to get it in on redirect. So, we have --

1 WITNESS McCLUSKEY: You got those?

2 CMSR. IGNATIUS: Well, I'll leave that
3 to you and your counsel to do that then. That's fine.

4 WITNESS McCLUSKEY: Yes.

5 BY CMSR. IGNATIUS:

6 Q. There was also discussion of the rate impact record
7 request that PSNH produced, and that is I believe a
8 "PSNH Exhibit 15", is that correct?

9 MR. BERSAK: Yes, it is, Commissioner.

10 BY CMSR. IGNATIUS:

11 Q. And, Mr. McCluskey and Mr. Frantz, both, if you could
12 look at that, and we had some discussion of how this
13 was built and what it demonstrates. But I didn't feel
14 that we've had a full discussion of how the exhibit
15 really works through. For example, it was assuming the
16 67.5 megawatt level, and I know you mentioned it was
17 not at 63. And, then, we get into more complicated
18 issues about which assumptions are built into it.
19 Maybe, rather than me trying to ask specific questions,
20 do you have further comments on how -- how you
21 interpret the record request and whether there's
22 anything that you think needs to be further fleshed out
23 for our consideration?

24 A. (McCluskey) As I said yesterday, we have PSNH's

1 spreadsheets. We have really focused on the inputs.
2 We don't have a problem with the method that's
3 reflected in the spreadsheet. We just think that the
4 inputs are what's important. And, we have real
5 differences with the Company on what would -- what set
6 of inputs would reflect the base case, the worst case,
7 and the best case. And, so, we've reworked the exhibit
8 to produce just that, a base case, worst case, a best
9 case, under two different power plants; a 63 megawatt
10 power plant and a 67 megawatt. Clearly, if you
11 increase the capacity, you're going to buy more
12 product. And, if the prices relative to the market are
13 higher, you're going to increase the rate impact in
14 doing that. If the prices in the PPA are lower than
15 the market, then there's going to be more benefit. So,
16 it just depends on where the market price assumptions
17 come out. And, our exhibit, I think we have copies of
18 that, if the Commission would like to see that.

19 Q. Again, if that's something you were planning to do, I
20 can leave that to you and your counsel to do. I'd like
21 to ask a couple of questions about the mechanics of the
22 CRF, and make sure that I understand how it might play
23 out at the end of the 20-year term. If you were to
24 assume initially that, at the end of the 20 years,

1 there's \$100 million in that account. And, it's not a
2 fund of real dollars, but it's an accounting of final
3 over-market amount paid by ratepayers, correct?

4 A. (McCluskey) Correct.

5 Q. And, then, let's think about a couple of different
6 valuations of the plant. Let's assume that, at the end
7 of that 20 years, the fair market value of the plant is
8 \$50 million. If PSNH were to -- had the authority to
9 exercise an option and did so to purchase it, I
10 assume you would get the value of the plant at
11 \$50 [50 million?] you would get credit for that, you
12 would discount with the 100 that you've already put in,
13 and PSNH would be entitled to purchase the plant for
14 zero additional dollars, is that correct?

15 A. (McCluskey) That's my understanding.

16 Q. And, so, at the end, the ratepayers would have spent
17 \$100 million, and they would have received a
18 \$50 million plant as a result?

19 A. (McCluskey) They would have received a plant worth
20 \$50 million for zero purchase price. So, they would
21 have received back, in essence, \$50 million of the
22 100 million in the account.

23 Q. Well, but isn't it also true that they would have
24 prepaid \$100 million. And, at the end of the day, what

1 they have in hand is a \$50 million plant?

2 A. (McCluskey) That's correct.

3 Q. If the plant, you still have 100 in the fund, and the
4 plant is worth \$100 million, your purchase price is
5 zero if they choose to exercise the option, and they
6 now have spent 100 -- ratepayers have spent
7 \$100 million and received a plant worth \$100 million?

8 A. (McCluskey) That's my understanding of how it works.

9 Q. And, if the plant is valued for higher, say,
10 \$200 million, the fund is at 100 million, at the end
11 would the option be that PSNH would be able to discount
12 the price by the 100 it's already put in, so, for an
13 additional 100 it could purchase the plant, up to the
14 fair market value now of 200. So that, in the end,
15 ratepayers will spend \$200 million and receive a plant
16 valued at \$200 million?

17 A. (McCluskey) Did you say the balance in the account was
18 100 or 200?

19 Q. It's still 100.

20 A. (McCluskey) Still 100. So, they spent \$100 million in
21 above-market payments, and that \$100 million went to
22 bring the price down from 200 to \$100 million. So, the
23 -- so, PSNH can acquire it by paying an extra
24 \$100 million.

1 Q. Right. So that, if PSNH does that, that's ultimately
2 ratepayer money, I assume. So that you've got
3 100 million prepaid over the course of the contract,
4 another 100 million paid at the time of the purchase.
5 So, a total of 200 million, for a plant valued at
6 200 million, is that fair?

7 A. (McCluskey) Well, PSNH makes the investment, and then
8 includes that investment in rate base, and seeks
9 recovery from customers of that \$100 million, plus any
10 return on it over the remaining life of the facility.

11 Q. You're right. And, the timing is not so
12 straightforward as I'm giving it. That's a good
13 reminder. You could play with all of those, if the
14 account is at zero, and the plant's at various
15 valuations, you could work those numbers through, if
16 the account is far higher than any of those, it's the
17 same analysis each time, is it not?

18 A. (McCluskey) Correct. The one thing that can't happen
19 is that the purchase price becomes negative. So, if
20 you have \$100 million in your first example, and it's
21 worth only \$50 million, we don't have Laidlaw giving
22 PSNH \$50 million. It's -- you just get up to the
23 market value of the plant.

24 Q. And, if, in my scenario, I said that's assuming that

1 PSNH has the legal authority to make the purchase. If
2 it does not, or it chooses not to purchase it for
3 itself, it could sell the plant, and any proceeds would
4 go back to ratepayers, correct?

5 A. (McCluskey) That's correct. It would sell the option.

6 Q. Yes.

7 A. (McCluskey) Sell the option to an affiliate or to a
8 third party, and there would be -- that is something of
9 value, that's like selling an asset. And, so, they
10 would expect something in return for that.

11 Q. And, PSNH testified, did you hear Mr. Long say this was
12 a "good creative solution", in the -- unlike cases
13 where fixed prices ends up being far over market, and
14 there was no value at the end for ratepayers, this was
15 an attempt to create a mechanism to bring some value
16 back to ratepayers?

17 A. (McCluskey) I guess it's questionable what value are
18 you getting at the end, what kind of plant are you
19 getting. The market or the appraisers will determine
20 what value there is in the plant. But, in the
21 meantime, over the 20 years, the customers are paying
22 more than the market energy prices through this
23 contract. So, you -- in a sense, customers are paying
24 out with one hand and taking back with another, and

1 we're concerned that what they're taking back is going
2 to be significantly different with what they paid out.
3 And, so, you know, at the moment we don't have any
4 interest involved there. Hence, there's a significant
5 difference in the time value of money. What you get in
6 20 years' time is worth -- could be worth very little
7 today. And, so, those payments that are paid out
8 today, that's in nominal dollars. That's real money
9 out of the customers' pockets. And, getting something
10 in 20 years' time, which is worth what? It depends on
11 the discount rate that you use. So, we don't consider
12 this to be the "innovative" deal. It's the first time
13 we've seen it. Maybe, because of the problems, that's
14 why we have never seen it before.

15 Q. Is it fair from your testimony to conclude that
16 renewable power should expect some level of premium
17 over market prices?

18 A. (McCluskey) Yes. These projects are assumed to be not
19 competitive with conventional power projects. But this
20 is a state policy that wants to encourage the
21 development of those. So, you've got to give the
22 developer a helping hand. There's got to be some kind
23 of subsidy in order to allow them to operate the plant,
24 not at a loss, but at a profit. And, so, yes, there

1 has to be this additional stream of revenues. We
2 recognize that. And, even if the -- we didn't like it,
3 that's the way the law works. That we pay them this
4 additional stream in order to encourage them to be part
5 of the power market. The only issue is, we think that
6 the prices are too high. That the subsidy is far too
7 high, even taking into account the potential local
8 economy benefits, which I can't talk to, but that's
9 kind of our view on it. We -- even though we see that
10 the policy is grounded in rational goals, there has to
11 be a limit to what level of subsidy is required. There
12 comes a point where you have to say "well, it's too
13 costly for that."

14 Q. Do you have in your mind a range or a percentage that
15 you think is a fair premium? And, I realize that
16 that's hard, because it's measured against what is the
17 unknown.

18 A. (McCluskey) Yes.

19 Q. But that ultimately is what we're challenged with, is
20 finding what the right price or the right mechanism or
21 the right risk balancing is to provide that adequate
22 premium for the facilities like these to be built, but
23 not at an unfair, unreasonable price, correct?

24 A. (McCluskey) Yes. I do have a view on that. And, I

1 tried to express it in my testimony. I think the best
2 way to determine what the appropriate prices should be
3 is through the cash flow analysis. And, I've just
4 indicated that that's how Vermont does it. And, I
5 think that kind of analysis is appropriate here,
6 because this is not a market-based deal. This is a
7 deal that they're essentially recovering their costs,
8 just like a rate-regulated plant, plus a return. The
9 major cost component for this facility is fuel. They
10 have established their PPA that's essentially going to
11 recover their fuel costs, and adjust it as those fuel
12 costs vary.

13 So, the way to determine a fair set of
14 prices for this project is to look at the cash flow
15 analysis. And, the model that I've used was the model
16 that PSNH was using. And, I've made some adjustments
17 based on my research of what is done in Vermont. And,
18 what we should be looking at is a set of prices that
19 produces a reasonable return for this company, and also
20 produces the kind of coverage ratios that they need in
21 order to ensure that they're going to get financing.
22 And, to determine what a reasonable target rate of
23 return is requires you to delve into the issue of risk.
24 If this were a merchant power plant, as I defined them,

1 where they're fully exposed to the market, they would
2 be experiencing significant risk, hence their target
3 return should be much greater than if the project had
4 no risk or very little risk. And, I've testified that
5 this project, in my view, has shifted a majority of the
6 risk to PSNH and its customers. And, hence, it's a
7 relatively low risk project, compared to a merchant.
8 So, we need to come up with a target return that is
9 somewhat higher than PSNH would get if it owned the
10 plant, and less than what a merchant power plant would
11 get if there were no long-term contract. And, there's
12 a whole range of returns that we could work through.

13 And, if we were -- if I were sitting
14 down negotiating with Laidlaw, this is the kind of
15 analysis that I would be looking at. And, we would
16 negotiate what an appropriate return is, and the prices
17 would drop out. We could leave the energy prices as
18 is, and just play with the REC price. Or, we could
19 move each of them, resulting in a bundled price, that
20 produced the target rate of return, which is exactly
21 what happens in Vermont. I believe the Vermont model
22 is the model that should be applied to this particular
23 contract. I'm not saying that we should do that for
24 all renewable projects. I believe we should be using

1 the competitive solicitation, so we wouldn't have to go
2 through this exercise of modeling or developing
3 forecasts of prices.

4 But, since we are in the middle of a
5 proceeding, where we have, in essence, a PPA in front
6 of us, I think the way to determine what the
7 appropriate prices are is to use some modeling. And,
8 we would hope that the Commissioners would send us back
9 and try and achieve what we consider to be more
10 appropriate prices.

11 Q. You stated earlier today that you could envision a
12 two-part pricing structure for RECs; one price set, if
13 I followed you, one price set at the -- for the number
14 of RECs needed given the then legal obligation to
15 obtain RECs and the level of load, and another price
16 for RECs in excess of that amount. Is that what you
17 were saying?

18 A. (McCluskey) Correct. That's the idea. In the early
19 years of this contract, my calculations indicate PSNH
20 does not need many of the RECs produced. So, pick a
21 year where, let's say they can use 50 percent of what
22 they produce, and the rest would have to be sold in the
23 market. Now, we could either say "well, you're going
24 to have -- you're going to have to sell them in the

1 market and achieve those revenues." Their response
2 might be "well, the banks are going to assume that
3 we're going to receive no revenues for the market
4 portion." So, one way to kind of address that is to
5 say "Okay. Even though there's no obligation to
6 purchase all the RECs, we will purchase them all, but
7 at a price that is reasonably close to the market."
8 So, if -- because we don't need them, we're going to
9 have to sell them. And, so, we don't want to be buying
10 them at a price that's significantly above the market.
11 We're not going to know what the market is, but I'm
12 imagining that we're in a negotiation, we're going to
13 have to assume what the market price is going to be.
14 And, so, I could imagine us saying "Okay. We'll buy
15 all those excess RECs at the market price. Everything
16 else gets purchased at the PPA price." Not actually
17 the ones that they've proposed, but some resulting PPA
18 price. And, as time moves on, where PSNH needs more
19 and more of those RECs, the PPA prices become dominant,
20 and they have less to sell in the market. So, that
21 would be my idea of how to get around this, this
22 problem of purchasing too many RECs, and, at the same
23 time, having a stream of revenues that's going to
24 ensure that the project gets financing.

1 Q. Have you seen any PPAs that use that structure?

2 A. (McCluskey) No, I haven't. In New York, the project
3 bids in, all the output is sold at the resulting
4 competitive bid price. And, I think that's the case in
5 Massachusetts. In Vermont, all of it is purchased at
6 the rate-regulated price. So, this, what we're talking
7 about here is, because the plant appears to be sized
8 well above the needs of PSNH, at least in some years of
9 the term. So, we're forced to address this issue.
10 Surely, we shouldn't be buying RECs at a price that is
11 above a reasonable expectation of where the market is
12 going to be.

13 I know that's difficult to put a figure
14 on that, but where is the market today? 16.50. Who
15 knows? Is it going to go down? Is it going to go up?
16 It's very difficult. Sometimes negotiation is the best
17 way to resolve these difficulties, where you horse
18 trade on different aspects of the problem.

19 Q. Do you have any thoughts on other ways that the risk --
20 in your view, the risk is too great on ratepayers here,
21 correct?

22 A. (McCluskey) Correct. And, I think the prices are too
23 high. And, why is that? Because I think the market is
24 going to be lower. So, in essence, it's a risk. If

1 I'm wrong with regard to where the market is, then it
2 turns out to be a great deal. But my analysis is
3 indicating that the market is going to be lower for
4 these products. Hence, there is a risk that customers
5 are going to pay far too much for the value of what's
6 produced.

7 Q. Have you thought about any risk-sharing mechanisms,
8 other ways to balance that risk than what's been
9 proposed here?

10 A. (McCluskey) Well, I think the two-step pricing approach
11 is kind of one way of doing that.

12 Q. That's on RECs specifically?

13 A. (McCluskey) That's on RECs. And, I think that is the
14 -- that I think is the primary cause of the high
15 returns that I've calculated for this PPA. There's
16 clearly a subsidy with regard to the energy prices.
17 They just developed them based on cost, without regard
18 to what the market is. But we think the real problem
19 is with the level of the REC prices. In effect, why do
20 we think it's the RECs? Think about this project as
21 having -- they have got three major cost components to
22 this project. One, the major cost is the fuel cost,
23 then you have O&M, then you've got the capital. The
24 O&M and fuel costs are effectively recovered

1 dollar-for-dollar. O&M, there's some risk there that
2 what they have built into the energy price may not be
3 fully recovered. But, I think, by and large, they have
4 made an attempt to estimate an O&M component to their
5 price that covers their estimates of where O&M costs
6 are going to be. The capacity prices in the -- so, the
7 energy prices cover those two cost components. The
8 only other uncovered cost is the capital cost. The
9 capacity prices go some way to recovering those. They
10 don't recover all. But then you've got this -- what I
11 call this "kicker" in the energy price, associated with
12 the 1.8 conversion factor, which produces this
13 additional revenue stream. When you add that to the
14 capacity cost stream, that, in effect, recovers the
15 capital cost of the plant, very close, based on the
16 Company's estimate of 167 million. So, we have all of
17 the three major cost components covered by the energy
18 and capacity prices. And, we have this REC stream
19 that's bringing in \$500 million, which would have to
20 cover the interest on the debt. And, essentially, the
21 rest is cash flow to the Company. So, based on my
22 analysis of this project, a substantial portion of this
23 \$500 million of revenue is going to result in a return
24 to investors. And, that's my major concern. We need

1 to get those REC prices down in order to achieve a
2 reasonable return for these investors.

3 Q. Mr. Frantz, have you thought about any other mechanisms
4 for pricing or for risk-sharing, as you've looked at
5 the PPA?

6 A. (Frantz) Well, we've discussed the same ones. I think
7 that the company that's not at the table here, Laidlaw,
8 can best assess its own risks. So, sitting down with
9 them gives you the best opportunity to actually reach
10 something that I think meets the needs of all people.
11 I think they're creative from the one day that we had
12 with them, and probably willing to work, but there's a
13 lot of options out there. And, Mr. McCluskey just
14 mentioned a few of them.

15 A. (McCluskey) I would just add that, we just didn't have
16 sufficient time to explore some ideas that were put on
17 the table in the one day of settlement. You know, for
18 a project of this magnitude, to have one day of
19 settlement scheduled is really just -- just doesn't cut
20 it. There's a lot of money at stake. And, it's going
21 to take a lot of hard bargaining in order to achieve an
22 outcome, if it's possible.

23 CMSR. IGNATIUS: Thank you. I
24 appreciate it. That's very helpful.

1 CHAIRMAN GETZ: Mr. Amidon, I take it,
2 from Mr. McCluskey's remarks, that you have redirect
3 prepared. I mean, how much redirect and are you ready to
4 launch into it?

5 MS. AMIDON: One moment please.

6 (Atty. Amidon conferring with Atty.
7 Damon.)

8 MS. AMIDON: Right. I do have some
9 prepared. What I don't -- didn't have a chance to do yet
10 is see if there is any further inquiry that needs to be
11 made based on what had taken place this morning. Could
12 you give me five minutes? And, I would like to start, I
13 mean, I certainly appreciate the -- you know, the
14 budgeting of time that the Commission has. And, I would
15 like to start, at least I could address Commissioner
16 Ignatius's questions that we have or are prepared to
17 address in our redirect. But could I have --

18 CHAIRMAN GETZ: Is there an order of
19 magnitude? Whether we're talking ten minutes or an hour?

20 MS. AMIDON: It's certainly not going to
21 be an hour. It's more in the nature of 20 minutes to a
22 half an hour, depending on the responses from the
23 witnesses. But I do want to just have two minutes to go
24 to the Bench and talk to them.

1 (Atty. Amidon conferring with the
2 witnesses.)

3 (Chairman and Commissioners conferring.)

4 MS. AMIDON: It looks like we will be
5 done sooner than we expected.

6 CHAIRMAN GETZ: Well, let me just put
7 this out there. We really can't be going till 1:30.

8 MS. AMIDON: This will not take that
9 long.

10 CHAIRMAN GETZ: Okay.

11 MS. AMIDON: Mr. Chairman, if you wish
12 to break right now, that's fine with us, too.

13 CHAIRMAN GETZ: Well, I guess, and I
14 certainly wouldn't put this on Staff counsel, because I
15 think all counsel who have ever appeared here have been
16 notoriously underestimated times for cross, redirect,
17 etcetera. So, and certainly don't take this personally,
18 but we really don't want to get headed down a path, if
19 it's going to take a long period of time. If it's
20 something that can be done quickly, then we would like to
21 do it. Though, I assume then always, if there's some
22 redirect, it may open a path to recross.

23 MS. AMIDON: We're fine with waiting,
24 Mr. Chairman. I know that there are other concerns that

1 are pressing on the Commission, and we're fine with
2 putting this off to another day, to avoid any possible
3 slipping over the timeframes that you set for this
4 hearing.

5 CHAIRMAN GETZ: There's one other thing
6 let me put out there as well, is in dealing with the
7 exhibits, what we could do is, if the parties wanted to
8 take the lunch recess and talk about that, I can come back
9 in an hour or hour and a half, whatever, to deal with any
10 of the evidentiary issues, and we can get that taken care
11 of today. Does anybody have any thoughts about that or
12 any other procedural matters?

13 MR. BERSAK: I would just love to get
14 this done today, Mr. Chairman, if we possibly could.

15 MR. BOLDT: I would agree.

16 CHAIRMAN GETZ: So would I.

17 MR. BERSAK: I know.

18 (Chairman and Commissioners conferring.)

19 CHAIRMAN GETZ: Ms. Hatfield.

20 MS. HATFIELD: Could we just ask the
21 Clerk that we get the most recent copy of the exhibit
22 list, and then we could all confer over lunch?

23 CHAIRMAN GETZ: Okay. Well, that would
24 certainly handle with respect to the evidentiary issues.

1 I guess what we're really pushing up against right now is
2 whether to start redirect. And, I think we may have a
3 consensus to let's try it and see how far it goes.

4 MS. AMIDON: Thank you.

5 REDIRECT EXAMINATION

6 BY MS. AMIDON:

7 Q. I'm going to begin by asking Mr. McCluskey the reasons
8 for your development of Staff Exhibit 15, which was a
9 comparison of historic prices provided by PSNH, with
10 your projections of the Laidlaw energy prices. Do you
11 recall that exhibit?

12 A. (McCluskey) I do.

13 Q. And, do you recall that PSNH, in their Exhibit 19, I
14 believe, modified that to reflect historic Concord
15 Steam wood prices?

16 A. (McCluskey) It became clear yesterday that the line
17 that was generally shown as under the market energy
18 prices related to Concord Steam fuel costs, not to
19 Schiller costs.

20 Q. And, Mr. McCluskey, in response to that, I believe you
21 directed the preparation of this exhibit.

22 MS. AMIDON: And, unfortunately, it
23 still says "Staff 15", I think we're up to 16. We're up
24 to 16.

1 CHAIRMAN GETZ: Okay. It will be so
2 marked.

3 (The document, as described, was
4 herewith marked as Staff Exhibit 16 for
5 identification.)

6 BY MS. AMIDON:

7 Q. And, could you explain the change that you made to this
8 exhibit, Mr. McCluskey.

9 A. (McCluskey) Yes. Relative to Staff Exhibit 15, we've
10 added two lines. The line in blue are the prices that
11 PSNH developed yesterday using the Concord Steam fuel
12 costs and the Laidlaw energy price formula. The second
13 line which has been added is in purple. And, these
14 prices are the energy prices if you use the Laidlaw
15 energy price formula with Schiller historic fuel costs.
16 And, it starts in 2007, because Schiller converted to
17 wood or at least Unit 5 at Schiller converted to wood
18 at that time. So, we only have four points, starting
19 in 2007 and running through 2010. So, visually it's
20 showing that, using historic fuel costs at Schiller,
21 that if this PPA had been in effect at that time, the
22 energy prices would have been above the market energy
23 prices, which are shown in red. Yes. All of these are
24 annual prices that have been developed, annual

1 averages.

2 Q. And, so, you -- and, so, this is a more correct
3 depiction of the Schiller prices with the Laidlaw
4 prices, is that your --

5 A. (McCluskey) The Schiller fuel costs with the Laidlaw
6 pricing formula produces the prices shown in purple on
7 this, on this chart.

8 Q. Thank you. And, you recall Commissioner Ignatius asked
9 about Staff's analysis of the rate impacts,
10 referencing the record request response of PSNH, which
11 provided the Company's analysis of the rate impacts of
12 the contract, is that correct?

13 A. (McCluskey) That's correct. In the -- I'll wait until
14 you hand it out.

15 Q. And, this document does not have a title on it,
16 unfortunately, but it has -- it depicts a six-column
17 analysis of prices in a Base Case, a Low Market/High
18 Cap, and a High Market/Low Cap Factor?

19 A. (McCluskey) Well, it actually has a title, "Staff Rate
20 Impact Analysis". Not on this one? Oh. It got left
21 off. In the version that I have in front of me, it has
22 a title "Staff Rate Impact Analysis". So, if you could
23 write that on the top of the schedule, if it's not
24 already there.

1 MS. AMIDON: If we just mark it for
2 identification as "Staff Exhibit 17", perhaps no one will
3 have to.

4 CHAIRMAN GETZ: So marked.

5 (The document, as described, was
6 herewith marked as Staff Exhibit 17 for
7 identification.)

8 MS. AMIDON: Thank you.

9 BY THE WITNESS:

10 A. (McCluskey) And, as I indicated earlier, it's broken
11 down into essentially two scenarios. A scenario, what
12 I call the "PPA proposed facility", roughly
13 63 megawatts, and the "Laidlaw expanded facility",
14 67.5. And, under each scenario, I develop a base case,
15 worst case, and best case, from the standpoint of the
16 customer. Worst case is from the customer's
17 standpoint. But, starting with the base case, we've
18 essentially used the structure and the formulas that
19 PSNH had in its spreadsheet. And, we're focusing on
20 the year 2014, and we think PSNH's was focusing on
21 2015. And, the main changes relate to the "Avoided
22 Costs of Products" block, where we've, under the "Base
23 Case", we have the energy market prices that came from
24 my Exhibit 12, and we have the REC market price, we

1 have a figure of "32.38", potentially a problem there,
2 and we have the capacity price of "2.95". And, we
3 develop whether it's above or below the PPA prices.
4 And, if it's -- if the PPA costs are greater than
5 market, there is a impact on rates. And, we've assumed
6 a mitigation [migration?] percentage of "31 percent"
7 under the "Base Case", and it produces a monthly bill
8 impact of "\$3.50".

9 Now, the worst case, from the customer's
10 standpoint is, if the facility operates at a high
11 performance. So, if the PPA prices are higher than
12 market, and the facility operates at the very high
13 performance, we've assumed 95 percent, then it's going
14 to result in more costs. If the fuel costs are higher
15 than what we assumed in the base case, that's going to
16 increase the costs. If the market prices are lower,
17 then that's going to increase the difference between
18 the two. So, this is the worst case for consumers.
19 And, under this particular worst case, we've come up
20 with a figure of -- and we used, by the way, the
21 "migration assumption" of "35 percent", based on the
22 recent report that we've got. So, everything is the
23 worst possible outcome. And, it's coming out at a
24 monthly impact of "5.76".

1 And, the best case is low fuel costs,
2 high market prices, and the facility just doesn't
3 operate at the level that Laidlaw is hoping to operate
4 it. And, we've just assumed on migration that it would
5 still be the "31 percent".

6 So, that's essentially the analysis.
7 When you move over to the expanded facility, all we've
8 done is change the capacity of the facility, which is
9 going to either increase the costs or increase the
10 benefits that consumers receive as a result of these
11 calculations.

12 BY MS. AMIDON:

13 Q. Thank you. Regarding Staff Exhibit 14, which was your
14 revision of I believe it's Sansoucy -- or, your attempt
15 to construct a Sansoucy Exhibit 18 [10?], there were
16 questions from Mr. Boldt and Commissioner Below
17 regarding the Ventyx based energy costs shown under the
18 block of data headed "Market Revenue 1". Do you recall
19 that?

20 A. (McCluskey) Yes, I do.

21 Q. Would you like to comment on the energy prices
22 underlying those costs?

23 A. (McCluskey) Yes. Those energy prices were taken from
24 Mr. Sansoucy's Exhibit 9, and apparently derive from

1 the Fall 2009 Ventyx Report, which is not actually in
2 evidence. We were provided with the Fall 2010 Report.
3 We do not have the Fall 2009 Report. And, I believe
4 it's been subject to a Motion to Strike.

5 According to Mr. Sansoucy, the prices in
6 the Fall 2009 Report differed from the prices in the
7 Fall 2010 Report in two respects. One is that the 2009
8 prices reflect a carbon scenario. And, the details of
9 which we know nothing about, because we don't have the
10 Fall 2009 document. The second difference is that the
11 underlying market conditions reflect the conditions in
12 2009, when the modelers were preparing their forecast.
13 They would have been using those market -- energy
14 market conditions as the starting point for developing
15 their long-term forecast. Just like the modelers, when
16 they were developing the 2010, would have been looking
17 at the market conditions at that time. Most
18 importantly, would have been natural gas prices. Where
19 do the modelers think natural gas price is going to go
20 in the future? And, there's been significant
21 developments in that market as a result of shale
22 production in various parts of the United States. The
23 problem is, we don't know -- we know that there's a
24 difference between the stream of 2009 prices, relative

1 to the 2010, but we don't know whether it's
2 attributable to the fact that one has a carbon scenario
3 and the other one hasn't, or is it attributable to the
4 fact that conditions are different from 2009 to 2010?

5 So, it's not appropriate to argue that
6 "well, if we wanted a scenario with carbon in, we
7 should use these 2009 prices." Because it's not just
8 carbon that's the difference. There could be
9 significant differences between 2009 and '10, as a
10 result of the market energy -- the energy market
11 conditions changing. And, so, we can't assume that the
12 difference is attributable to the carbon scenario. So,
13 that's the point that we wanted to make. It's very
14 dangerous to be using those numbers to draw any
15 conclusions in this case, because we don't have the
16 document to support it.

17 Q. Thank you. Mr. Bersak raised a question regarding your
18 testimony at Page 14, where you talk about, at Line 15,
19 "above-market cost of \$125 million" related to the
20 purchase of Class I RECs. Would you please clarify
21 your response to Mr. Bersak regarding that section.
22 Are you there?

23 A. (McCluskey) Yes. I think there was some confusion,
24 possibly in Mr. Bersak's mind and maybe in my mind when

1 I was responding to Mr. Bersak. There seemed to be an
2 understanding that this \$125 million was the
3 above-market REC cost estimate. That is not the case.
4 That estimate is of the order of \$285 million in my
5 testimony. What this is addressing is not the,
6 essentially, the above-market cost of RECs, but it's
7 addressing the additional cost to PSNH as a result of
8 purchasing RECs more than they need. And, I put a
9 figure of 175 million on that additional cost. What
10 the "\$125 million" figure is, is that, well, if PSNH
11 has got these additional RECs, surely, it's going to
12 sell them in the market. So, we need to have an
13 estimate of what the market price is going to be, in
14 order to determine the net cost to PSNH as a result of
15 purchasing these excess RECs. In this particular
16 calculation, I just simply assumed, I just used the
17 current market price to make that estimate. Whereas,
18 when I developed the above-market cost estimate for
19 RECs, I used the full long range price forecast from
20 Synapse. So, that's the -- I just wanted to clarify
21 that the "\$125 million" figure is addressing a very
22 different issue than the above-market REC cost
23 calculation.

24 Q. Finally, Mr. McCluskey, Mr. Bersak asked whether RSA

1 362-F:9 required a utility to issue an RFP to comply
2 with the RPS requirement. Do you recall that?

3 A. (McCluskey) I do.

4 Q. And, I think we agree the statute does not require an
5 RFP. But does the statute include, as one of the
6 criteria for the Commission to consider, the
7 cost-effectiveness of the -- of a long-term PPA to
8 comply with the REC requirements?

9 A. (McCluskey) Yes. And, these two things seem to go in
10 opposite directions. There's a minimum requirement on
11 the Company. And, he's correct that this word
12 "excess", they can buy -- apparently buy more than the
13 minimum. But there's also this requirement that it's
14 got to be cost-effective. And, if you are buying more
15 RECs, and they are priced above market, then that's
16 going to increase costs to consumers, and it makes it
17 more difficult to achieve the "cost-effectiveness"
18 definition. So, I don't think there was any intent in
19 the legislation for a company just to cut loose and buy
20 significantly more than what the minimum requirement
21 is, because there's this cost-effectiveness obligation
22 as well. So, I think those two things have to be
23 considered in tandem in determining what the
24 appropriate amount to purchase is.

1 MS. AMIDON: Thank you. That concludes
2 my redirect.

3 CHAIRMAN GETZ: Thank you. Mr. Bersak?

4 MR. BERSAK: We are all finished, Mr.
5 Chairman. Thank you very much for your patience.

6 CHAIRMAN GETZ: Thank you. Then, the
7 witnesses are excused. Thank you, gentlemen.

8 While Mr. Frantz and Mr. McCluskey are
9 leaving the stand, I want to address the issue of
10 exhibits. I think we're going to take a lunch recess
11 regardless right now. But, if the parties want to talk
12 over lunch, at a minimum, I am going to be able to come
13 back at, say, no sooner than 2:30, or I can await your
14 call, in terms of, if you try to come to some agreement on
15 exhibits, and come down and then would make any necessary
16 rulings on striking identifications, admitting exhibits
17 into evidence. And that, I would take it, would be the
18 last thing, except maybe trying to reach some agreement on
19 a date for the written comments, the written closings.

20 MR. BOLDT: Very briefly, Mr. Chairman.
21 I was -- we did have in attendance yesterday both the
22 Mayor of Berlin and a member of the United Steel Workers
23 Local 75, Mr. Edward DeBlois. I do have a statement from
24 him that he asked me to present. We also have copies of

1 the public statements of the various politicians and members
2 of the North Country Economic Development entities, that
3 we wanted to be sure that the Commissioners had available
4 to them in paper copy. I've got those as packets just to
5 present. We just wanted to make sure that was on the
6 record.

7 CHAIRMAN GETZ: And, you mean "present",
8 meaning "submit", not "read"?

9 MR. BOLDT: Correct. Correct. Not
10 "read", no.

11 CHAIRMAN GETZ: Okay. All right. Thank
12 you. Well, let's -- I think we can certainly present
13 those to the Clerk.

14 (Chairman and Commissioners conferring.)

15 CHAIRMAN GETZ: Okay. Then, let's --
16 we'll take the lunch recess, and I'll await a call to come
17 back and see if there are any problems with evidentiary
18 issues. Thank you, everyone.

19 MR. BERSAK: Thank you.

20 MR. BOLDT: Thank you.

21 (Whereupon the lunch recess was taken at
22 1:15 p.m. and the hearing resumed at
23 3:10 p.m.)

24 CHAIRMAN GETZ: We've managed a quorum.

1 So, back on the record to address any potential
2 evidentiary issues. Well, let me, I guess, start this
3 way: Is there any objection to striking the
4 identifications and admitting the exhibits into evidence?

5 MS. HATFIELD: Yes, Mr. Chairman.

6 MS. AMIDON: Yes.

7 CHAIRMAN GETZ: Okay. Who would like to
8 go first?

9 MS. AMIDON: I will begin. This has to
10 do with Dr. Shapiro's amended direct testimony on the
11 stand. Where she spoke to the economic benefit associated
12 with the collocation of a new, but unidentified, business
13 that may make a commitment to locate with Laidlaw at the
14 plant. I believe that's PSNH Exhibit 10.

15 CHAIRMAN GETZ: And, this is the Berlin
16 Sun --

17 MS. AMIDON: Yes.

18 CHAIRMAN GETZ: -- newspaper article?

19 MS. AMIDON: Yes, the Berlin Daily Sun.
20 And, Dr. Shapiro mentioned a number of jobs, she also
21 mentioned a number of benefits associated with those jobs
22 that would go to the local economy. However, Staff was
23 not able to understand what the entity was, what kind of
24 business it was, and did not see any of the underlying

1 work papers associated with Dr. Shapiro's calculation of
2 economic benefit. And, therefore, we would move to strike
3 that testimony from the record.

4 CHAIRMAN GETZ: Okay. Well, let me just
5 get the full universe of things first, and then we'll --

6 MS. AMIDON: Okay.

7 CHAIRMAN GETZ: -- allow opportunity for
8 responses. Okay.

9 MS. HATFIELD: And, actually, Mr.
10 Chairman, with respect to the Shapiro additional testimony
11 that Attorney Amidon was just referencing, I just wanted
12 to make clear that I don't object to PSNH 10 itself being
13 in, I think the Commission should give it very little
14 weight, because it's a newspaper article citing Laidlaw,
15 talking about a potential other occupant of the space or
16 on that site. But I do support what Attorney Amidon said
17 about Dr. Shapiro's oral testimony given, I believe, on, I
18 forget -- it was Day 1, I believe.

19 CHAIRMAN GETZ: So, basically, what
20 conclusions she would draw from the information that was
21 in the newspaper article?

22 MS. HATFIELD: Yes. And, I think she
23 characterized it as "revising her direct", if I remember
24 correctly, if that matters. And, I can go on to the next

1 one, if I'm next in line.

2 CHAIRMAN GETZ: Okay.

3 MS. HATFIELD: Staff 12C and Staff 13C
4 are actually things that the City brought into the case,
5 but they're marked as Staff exhibits, because they hadn't
6 been otherwise marked. And, I'll start with 13C first,
7 because I think it's simpler. We object --

8 CHAIRMAN GETZ: And, we're talking here
9 about the Staff 12 and Staff 13?

10 MS. HATFIELD: Yes.

11 CHAIRMAN GETZ: Are those the Ventyx?

12 MS. HATFIELD: Yes.

13 MS. AMIDON: Correct.

14 MS. HATFIELD: And, Staff 13C is the
15 confidential Ventyx tables. And, I believe it's four
16 pages. And, the first two pages relate to Ventyx Fall
17 2009, and the second two pages relate to Ventyx Spring
18 2010. And, one of our objections is that these tables
19 really don't stand on their own. They are similar to
20 tables that are provided in 12C, along with what appears
21 to be a few hundred pages of background and context. And,
22 we don't believe that the -- just the stand-alone tables
23 of numbers in them, without an explanation of the
24 derivation of the numbers and how Ventyx intends -- or,

1 what they intend for them to represent, should be allowed
2 into the record.

3 MS. AMIDON: And, just for the record,
4 Staff concurs with that. If you recall, the Fall 2000 --
5 I think it was Fall 2009, was representative as having
6 carbon in, which became a topic of conversation. But,
7 absent having the treatise that provides the context, the
8 background for those numbers, Staff was not able to
9 examine the validity of those numbers or understand their
10 origin.

11 CHAIRMAN GETZ: Okay.

12 MS. HATFIELD: And, then, with respect
13 to Staff 12C, which is the full Ventyx Fall 2010 Report
14 and associated tables, we don't have an objection to it
15 going in. But, at some point, maybe not -- now may not be
16 the right time, but at some point we would like to discuss
17 with the Commission the confidential -- the Company --
18 excuse me, the City's request for confidential treatment,
19 in light of the fact that the report was discussed at
20 length in the public session of the hearing. So, at some
21 point, we would like to discuss that.

22 CHAIRMAN GETZ: What do you mean by "at
23 some point"?

24 MS. HATFIELD: Well, because, to me,

1 that's not really a discovery issue, it's more about how
2 you're going to rule on the Motion for Confidential
3 Treatment, which I think you granted confidential
4 treatment orally. The challenge is that Mr. -- or, both
5 Mr. Sansoucy and Attorney Boldt, and I think even other
6 witnesses that Mr. Boldt crossed, read significant
7 portions of this into the public record, and public
8 portions of the testimony also utilize the Ventyx numbers.

9 So, I'm intending to comply with the
10 agreement that I have with Attorney Boldt on this
11 material, which is to return it to him at the end of the
12 case and to not reproduce it. And, that's really around
13 the copyright issues. But I just wanted to flag for you
14 that a lot of these materials have now been put into the
15 public record.

16 CHAIRMAN GETZ: Well, is this one of
17 those issues where the parties may need to look at the
18 transcript and try to determine what should be or if
19 there's an agreement or what should be protected or what
20 shouldn't, and then some proposal in writing made to the
21 Commission?

22 MS. HATFIELD: I think that that's --
23 that's what we often do. I think the challenge is that
24 there were members of the public attending that portion of

1 the hearing, if I remember correctly. And, so, if that's
2 what the Commission would like us to do, I think that
3 that's fine. There may be -- there may be portions of it
4 where the confidentiality request has, in effect, been
5 waived by being read in public session.

6 CHAIRMAN GETZ: But it's certainly not
7 an issue that should cause us to defer deliberations or a
8 final order on the merits?

9 MS. HATFIELD: Oh, absolutely not.

10 CHAIRMAN GETZ: Okay. All right. Then,
11 I would say, if there could be further discussion among
12 the parties. And, if there's an agreement, great. If we
13 need to have something raised, either orally or in writing
14 or another hearing or do it on the papers, then we'll
15 handle it as it comes along.

16 MS. HATFIELD: And, then, the last one
17 that I was going to raise is related to that, related to
18 both of the Ventyx materials, in part. And, that is the
19 City of Berlin Exhibit GES-3, which is the Rebuttal
20 Testimony of George E. Sansoucy. And, there are portions
21 -- that is Exhibit 3, and then his attachments to his
22 testimony are also labeled "exhibits". So, this may be a
23 little bit confusing. But Exhibit 9 to that testimony
24 included, I believe, information from the '09 Ventyx

1 materials, which we've asked not be admitted.

2 CHAIRMAN GETZ: So, that's just kind of
3 a derivative type of argument?

4 MS. HATFIELD: Yes. Yes.

5 CHAIRMAN GETZ: Okay.

6 MS. HATFIELD: Then, in addition, both
7 Exhibit 9 and Exhibit 10 to Mr. Sansoucy's testimony, he,
8 both in the text technical session that we held, as well
9 as in the hearing, explained that he couldn't find some of
10 the backup for some of the calculations in those tables,
11 and therefore he couldn't explain some of the numbers and
12 some of his intended uses for them. And, then, as a
13 result, the City brought in what they -- what we referred
14 to during the hearing as "Exhibit 10 Revised", which again
15 is Exhibit 10 to Exhibit GES-3. Which I now understand
16 that Attorney Boldt would like to have considered as
17 "Exhibit 11" to Mr. Sansoucy's testimony, so that it would
18 have an Exhibit 9, an Exhibit 10, and an Exhibit 11. And,
19 we object to the Exhibit 11, because it is new testimony
20 that we think really is direct, which is appended to
21 rebuttal. And, also, the parties received it I think on
22 the day that he was on the stand. And, we didn't have
23 sufficient time to review it or see any of the backup
24 materials to it.

1 MS. AMIDON: And, Staff concurs with the
2 motions raised by Attorney Hatfield.

3 CHAIRMAN GETZ: All right. Thank you.
4 Mr. Shulock?

5 MR. SHULOCK: The Wood IPPs concur in
6 the motions made by OCA and Staff.

7 CHAIRMAN GETZ: Okay. But no other
8 documents that you're identifying?

9 MR. SHULOCK: No.

10 CHAIRMAN GETZ: All right. Well, let's
11 see. Well, do either of you gentlemen have objections to
12 admitting any evidence?

13 MR. BERSAK: No, Mr. Chairman. We're
14 fine.

15 CHAIRMAN GETZ: Okay.

16 MR. BOLDT: And, Mr. Chairman, my
17 position would be, it's all to come in, and you, in your
18 infinite wisdom, will sort it all out in the wash.
19 Depending upon what your ruling is on some of the
20 objections raised by Staff and OCA, we may have similar
21 rulings to the new creations that Staff witnesses created
22 on the fly, gave us today for the first time, those kind
23 of things.

24 So, my opinion is, you have heard all of

1 the evidence. You have seen the witnesses. All things
2 can come in. On the Ventyx issues, we do not intend and
3 did not intend to waive confidentiality. We understood we
4 were working under the Commission's ruling on
5 confidentiality. And, in no way, shape or form were we
6 intending the full reports, which are, I want to stress to
7 you, Staff exhibits, both 12 and 13 became Staff
8 exhibits, that we are not waiving confidentiality.

9 The Exhibit 13 are the backup tables
10 that were produced at their request to substantiate some
11 of their questioning of Mr. Sansoucy. I do not believe
12 this is something that should be stricken. It is not
13 something that we've had -- or, rather, it is something
14 we've had some extensive examination of several witnesses
15 concerning what Ventyx does and does not say. To excise
16 part now, now that the evidence is closed, is I think not
17 fair to the parties.

18 With respect to portions of Exhibit 9
19 and Exhibit 10 to the rebuttal, it was only Exhibit 10, D
20 -- Column D, rather, that Mr. Sansoucy could not recall
21 the exact -- the formulas to back that up. All of these
22 things, your Honor, go to the weight, not to the
23 admissibility.

24 You and the Board can give all of these

1 exhibits the proper weight in your mix of all of this
2 evidence, allow it to come in, and not excise anything.

3 As for Exhibit 10 Revised, you may
4 recall that I gave everyone a moment of mirth, because I
5 said "I wasn't sure should it be "Revised Exhibit 10",
6 "Exhibit 11", or "Exhibit 4"." Because, under the format
7 of how things should be ordered, we weren't -- we weren't
8 quite clear.

9 In short, that is -- that was discussed
10 at some length, both on direct and in cross of Mr.
11 Sansoucy on the 1st. Again, it comes in, you give it what
12 weight you wish.

13 And, I think I've talked about the
14 confidentiality. One of the things that Ms. Amidon said
15 about some of the documentation goes to numbers with
16 carbon in, keep in mind we've had extensive discussion
17 with both Mr. Sansoucy and Mr. McCluskey on their
18 calculations with carbon in, with carbon out. Again, this
19 goes to weight. This goes to material evidence that this
20 Board can consider. We ask that you keep everything in,
21 and we go from there.

22 CHAIRMAN GETZ: Okay. Thank you. Mr.
23 Bersak?

24 MR. BERSAK: I have no objections. Just

1 let everything come on in.

2 CHAIRMAN GETZ: That was the opportunity
3 to make an argument, but that's fine.

4 MR. BERSAK: Okay. I thought you were
5 asking for a consensus on or a listing of all the
6 objections. With respect to the objection to
7 Dr. Shapiro's testimony that she gave with respect to the
8 additional jobs and additional economic development up in
9 Berlin, I think that the Commission is well aware that
10 economic development is one of the key aspects of the
11 Renewable Portfolio Standard. And, the Company felt it
12 was important for the Commission to know what economic
13 development matters were at stake when the merits of the
14 PPA were being weighed. The best information that was
15 available was provided to the Commission. That there is a
16 new development up in Berlin that's dependent upon the
17 existence of the Berlin Laidlaw biomass plant that would
18 provide 65 direct jobs. Dr. Shapiro presented expert
19 opinion, based on the available information, as to the
20 impact that a develop such as that would have. And, I
21 think it's important for the Commission to consider that
22 in weighing the public policy and public interest
23 standards of the statute.

24 CHAIRMAN GETZ: All right. Is there

1 anything further?

2 MS. AMIDON: One final observation. My
3 colleague, Attorney Damon, suggested that the Commission
4 consider whether they want to take administrative notice
5 of the Synapse 2009 Report, because that was excerpt, but
6 is something I think the Commission considered in
7 connection with a docket that was mentioned today, Docket
8 09-137. So, it's just an offer that the Commission may
9 want to consider.

10 CHAIRMAN GETZ: But it's a matter of
11 record in that docket?

12 MS. AMIDON: There is, I think -- yes.
13 Yes. I believe that's what Attorney Bersak said, too.

14 MR. BERSAK: I believe that it is. You
15 know, we gave, in our Exhibit Number 24, some extracts
16 from it. But, if the Commission feels its important to
17 read all 399 pages, you're certainly welcome to do so.

18 CHAIRMAN GETZ: Well, I'm more concerned
19 with the more formal issue of official or administrative
20 notice. But it's certainly not something we have to
21 decide today. I do want to deal with the other
22 evidentiary issues. But the administrative notice thing,
23 we'll just take that under advisement and that will be
24 part of our deliberations.

1 MS. HATFIELD: And, Mr. Chairman, I did
2 have a few other comments related to administrative
3 notice, but I can hold off on that now, if you want to
4 focus on the evidentiary pieces.

5 CHAIRMAN GETZ: Well, I think what we're
6 going to do is take a brief recess to consider the
7 motions, about what to do with these particular exhibits.

8 MS. HATFIELD: Okay.

9 CHAIRMAN GETZ: So, why don't we hear
10 what you have to say about other issues of administrative
11 notice.

12 MS. HATFIELD: Thank you. I just wanted
13 to remind the Commission that I requested that you take
14 administrative notice of two dockets during the hearings.
15 One is DE 08-077, the Lempster PPA docket, and the other
16 is DE 03-166, the Schiller Modification docket. And,
17 then, I also just -- I know you're very aware of this, but
18 I did just want to point out that you didn't take
19 administrative notice of the Site Evaluation Committee
20 process. And, while that has come up many times during
21 these hearings, I think you're also aware that Laidlaw's
22 motion to allow Staff and the OCA to have access to
23 confidential transcripts was denied. So, our office and
24 Staff have not had the opportunity to read significant

1 portions of those transcripts, which my understanding is
2 the Site Evaluation Committee believes are sealed from the
3 public. So, I just wanted to make sure the Commission was
4 aware that we didn't participate in those proceedings and
5 we haven't had the benefit of that information.

6 CHAIRMAN GETZ: Okay. Let me address,
7 first, the Lempster and Schiller proceedings. Is there
8 any objection to taking administrative notice of those, of
9 the documents in those proceedings?

10 MR. BOLDT: I would question the
11 relevance on Lempster, your Honor. Just from the
12 standpoint that is a wind project. There's been some
13 extensive testimony of both Mr. McCluskey and Mr. Sansoucy
14 on some significant distinctions. We're not quite sure
15 that it's absolutely relevant. I don't know what's in
16 either of those, but that would be my key issue on
17 Lempster.

18 CHAIRMAN GETZ: Okay. Well, we'll take
19 it under advisement, whether to take administrative
20 notice. Okay. Anything else?

21 MS. AMIDON: And, just one final.
22 You'll be happy to know that we have an agreement on
23 closings. We've agreed to a page limit of six pages.
24 And, we've agreed to file them no later than 4:30 on

1 Monday, February 14th. So, by close of business, you
2 should get them. I believe there was also a decision to
3 do one and a half spacing. Now, which may vary from party
4 to party. But we have agreed to a deadline.

5 MR. BOLDT: One and a half spacing, and
6 even 12 font, your Honor.

7 CHAIRMAN GETZ: And, Valentine exhibits.

8 MR. BOLDT: And, little hearts over the
9 i's.

10 MR. BERSAK: Dotting the i's. The
11 Synapse Report, Mr. Chairman, was attached as an
12 attachment to Cindy Carroll's testimony in Docket 09-137,
13 that's the Unutil Distributed Generation case. So, it is
14 available, it is part of the record in that, all 399
15 pages.

16 CHAIRMAN GETZ: Thank you.

17 CMSR. IGNATIUS: Mr. Boldt, can I
18 clarify with you your understanding of the confidentiality
19 request for the Ventyx full report and the information
20 contained within the report? Because I was surprised just
21 now to hear you say that you still see those as fully
22 confidential. I thought, in the course of the hearings,
23 you had said they were not confidential numbers, we could
24 testify to them, we could explore them, without worrying

1 about clearing the room. So, maybe I misunderstood.
2 Maybe just -- if you can just explain where you are on
3 that?

4 MR. BOLDT: Certainly. My
5 understanding was that this report is confidential and in
6 this case only. It's not to be copied outside. The
7 report's not a public document, per se. Keep in mind
8 also, we've only testified specifically on certain parts,
9 rather than the whole. But Staff has tendered the full
10 report and the four pages of additional tables as
11 exhibits. And, I believe the record will show, when they
12 did that, I renewed our understanding of "these remain
13 confidential and subject to the Board's prior order." I
14 don't have a transcript of that, but that is my
15 understanding.

16 CMSR. IGNATIUS: But tell me what you
17 mean by "subject to confidentiality", because I think you
18 and I may be talking about two different things. So, when
19 you say "it's subject to confidentiality", what do you
20 mean by that?

21 MR. BOLDT: That this report cannot
22 just simply -- somebody can't walk up to the window and
23 ask "I want a copy of this report." It is to be used in
24 this case and the Board's deliberation. It was used by

1 all parties in the examination. Mr. McCluskey used it,
2 Mr. Sansoucy used it, in creating some of their exhibits.
3 So, the numbers are inherently peppered throughout the
4 last few days. But the report itself is not subject to
5 reproduction to the outside world. That's the key.

6 CMSR. IGNATIUS: But the appearance of
7 text or numbers from the report that are in the transcript
8 you're not troubled by? In a public transcript?

9 MR. BOLDT: We believe that's okay.
10 But, if it is something for "belt and suspenders", if
11 there's a process that is normal for this venue, that
12 maybe Ms. Hatfield and I can go through, when we finally
13 get a transcript, and go, you know, "this line to that
14 line is confidential." Great, fine, and wonderful. The
15 key concern for us is the report itself not being subject
16 to ready duplication. All of the parties have agreed --

17 CHAIRMAN GETZ: You see, that seems
18 where I think there's ongoing confusion between "what's a
19 confidentiality issue" and "what's a copyright issue?"

20 MR. BOLDT: And, I guess I'm playing in
21 the 91-A world also. That things that are confidential
22 and not subject to production under 91-A, there is the
23 paragraph of 5, III(e), I believe, whichever it is that,
24 you know, "commercial, confidential, privileged

1 information". This is something that we have discussed at
2 length, I thought, and the Court -- the body ruled in our
3 favor that it retained its confidential nature.

4 CMSR. IGNATIUS: Well, I certainly hope
5 we don't end up redacting numbers, sentences throughout
6 the number of days of hearings we've had. As I recall,
7 the Chairman asked you to flag the issue of heading into
8 confidential material when it came up. He said this is
9 your responsibilities to identify that, and I don't recall
10 any more indication of when we were veering too far. And,
11 your own testimony quotes sections of the report, text of
12 it. So, that's why I'm just lost on what you consider
13 fair for public dissemination and what you consider unfair
14 for public dissemination.

15 (Mr. Sansoucy conferring with Atty.
16 Boldt.)

17 MR. BOLDT: We may not -- we may not
18 need to redact transcript. It's the report itself.
19 That's the key issue.

20 MR. SANSOUCY: I think the confusion
21 might be that they're taking the literal sense of the
22 copyright issue --

23 CHAIRMAN GETZ: Wait. Are you talking
24 to us or are you talking --

1 MR. BOLDT: No, he's talking to me. My
2 apologies.

3 (Mr. Sansoucy conferring with Atty.
4 Boldt.)

5 MR. BOLDT: If the report itself is not
6 released, we're fine. The text of the transcript, the
7 numbers are in it from both witnesses, I agree. I've read
8 portions, and that is fine to be in the public transcript.
9 But the document itself, we don't want somebody -- we were
10 not expecting somebody to be able to come up to the window
11 and ask for a copy of 12C, Staff 12C.

12 CHAIRMAN GETZ: I hate to spend any more
13 time on this issue. But what if somebody comes up to the
14 window and doesn't want a copy, but would like to look at
15 it?

16 MR. BOLDT: We would hope that it is
17 still confidential. That's a "no". That it's labeled as
18 "confidential".

19 CHAIRMAN GETZ: Okay. Well, we'll have
20 to take this under consideration, because I still think
21 there's a fundamental confusion about the confidentiality
22 laws and the copyright laws. But --

23 CMSR. IGNATIUS: And, one other matter.
24 There was another document that was handed out, referenced

1 as the title as being "confidential", same copyright
2 concerns. It was never marked as an exhibit.

3 MR. BOLDT: Correct.

4 CMSR. IGNATIUS: I don't know if it was
5 ever really used. Is that --

6 MR. BOLDT: Staff did not mark that as
7 an exhibit, we did not mark it as an exhibit. I think it
8 is referenced in some parts of Mr. Sansoucy's testimony.
9 But my recollection is there was no real cross on those
10 topics or that basis. So, I'm not viewing that as in the
11 record, whereas his testimony is.

12 CMSR. IGNATIUS: All right. It may not
13 be in the record as an exhibit. It's in the confines of
14 the Public Utilities Commission, and thus --

15 MR. BOLDT: Correct.

16 CMSR. IGNATIUS: -- open to Request for
17 Right to Know release. And, so, I don't know what your
18 recommendation is on that?

19 MR. BOLDT: We were treating that also
20 as subject to the confidentiality order of this body, so
21 that it would be treated as confidential.

22 CMSR. IGNATIUS: Thank you.

23 CHAIRMAN GETZ: Okay. Anything further?

24 (No verbal response)

1 CHAIRMAN GETZ: All right. We're going
2 to take a recess. I hope it's not a lengthy recess. And,
3 well, I guess I'm trying to decide whether we really need
4 to rule on this today or whether we can take it under
5 advisement. I'd prefer to have some deliberations and try
6 to rule on it. And, then, we would hopefully be in a
7 position to close the hearings and then wait for the
8 written closings.

9 So, we'll take a brief recess.

10 (Whereupon a recess was taken at 3:39
11 p.m. and the hearing resumed at 4:00
12 p.m.)

13 CHAIRMAN GETZ: Okay. We're not going
14 to try to address the confidentiality issues. So,
15 hopefully, if you can get something to us on those
16 matters, then fine. And, if we have to deal with those at
17 some other point, we'll do that. But we're just going to
18 address the evidentiary issues at this point.

19 So, the first item was Staff, with
20 respect to PSNH Exhibit 10, and that's the Berlin Daily
21 Sun article about the "Green company interested in
22 locating on former mill site", and Dr. Shapiro's
23 supplemental direct with respect to that issue. We're
24 going to deny the Motion to Strike that. We'll permit

1 that, both the exhibit and the supplemental testimony.
2 This is new information that was previously unavailable.
3 And, we're going to give the testimony and the exhibit the
4 weight it's due, recognizing that there's some level of
5 uncertainty about who the company might be and what's the
6 -- what are the actual prospects for such a company to be
7 built and to add such jobs. So, we'll give that the
8 weight -- we'll admit it and give it the weight it's due.

9 On the second issue, with respect to
10 Staff 12C and 13C, essentially, the issues of the Ventyx
11 tables and especially the Fall '09 exhibits, which have
12 tables, but not the fuller explanation that we find with
13 the full Fall 2010 document. Again, we're going to admit
14 the evidence, but give it the weight it's due, recognizing
15 that it's only an excerpt, and we don't have comparable
16 information with respect to those tables that we do with
17 the Fall 2010 information.

18 And, then, with respect to City of
19 Berlin's exhibits, Exhibit 3, Mr. Sansoucy's rebuttal
20 testimony, and Exhibits 9, 10, and what now is being
21 designated as "Exhibit 11", the last three attachments to
22 Mr. Sansoucy's testimony. Again, we're going to admit all
23 three of those exhibits, giving them the weight they're
24 due, noting, among other things, that, in Exhibit 10, in

1 Column D, that there is -- the work papers could not be
2 located for that. And, I think also, with respect to 11,
3 I had commented earlier in the proceeding that it really
4 just takes some of the information from Exhibit 9, and
5 then multiplies it by what I understand to be is the
6 output of a 67.5 megawatt facility. So, there's really
7 nothing in Exhibit 11 that's really not in Exhibit 9 or
8 couldn't be easily derived therefrom. But, again, with
9 the proviso that they will be given the weight due,
10 understanding that it's from the Ventyx materials, and
11 that there was -- these materials really came fully to
12 light late in the proceeding, and there may be arguments
13 about a full opportunity to review those. But I think
14 there has been adequate review or that we've certainly
15 heard a good deal about those documents and we have seen
16 those documents.

17 There was one other issue.

18 (Chairman Getz and Commissioner Ignatius
19 conferring.)

20 CHAIRMAN GETZ: And, just let me add
21 this about the admissibility of these particular documents
22 and the weight to be given. To the extent they form a
23 basis for our decision in our deliberations, and it's
24 necessary to comment on what weight we did give to them,

1 that will be something that we would develop in our final
2 decision. So, for now, all we're doing is admitting them
3 into evidence, recognizing that there are -- legitimate
4 issues of weight have been raised, and we'll give them the
5 weight that we determine is appropriate.

6 And, then, we'll take under advisement
7 the issues of administrative notice. And, we'll see if
8 anything further develops on the confidentiality issues.
9 Unless, is there anything else that anyone would like to
10 raise at this point?

11 (No verbal response)

12 CHAIRMAN GETZ: Okay. Hearing nothing,
13 then we will close the hearing. Wait for the written
14 closings and take the matter under advisement. Thank you,
15 everyone.

16 MR. BERSAK: Thank you, your Honor.

17 MR. BOLDT: Thank you very much.

18 (Whereupon the hearing ended at 4:04
19 p.m.)
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