

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

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February 12, 2015 - 10:08 a.m.
Concord, New Hampshire

**RE:DE 15-035 ELECTRIC RENEWABLE PORTFOLIO STANDARD -
RSA 362-F:4, V AND VI, Adjustments to Renewable
Class Requirements - PUBLIC COMMENT HEARING**

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott

Sandy Deno - Clerk

APPEARANCES:

Reptg. Liberty Utilities:
John D. Warshaw

Reptg. Retail Energy Supply Association
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. Electricity NH, LLC, d/b/a ENH Power:
Patricia M. French, Esq. (Bernstein Shur)

Reptg. Bridgewater Power Co... (6 Biomass Plants):
Robert Olson, Esq.

Reptg. Energy Audits Unlimited, LLC:
Paul Button

Reptg. Unitil Energy System, Inc.:
Susan S. Geiger, Esq. (Orr & Reno)

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

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APPEARANCES (cont'd):

Reptg. Eversource Energy:
Richard Labrecque

Reptg. Constellation Energy:
Dan Allegretti

Reptg. N.H. Electric Cooperative, Inc.:
Mark W. Dean, Esq.

Reptg. Office of the Consumer Advocate (OCA):
Susan W. Chamberlin, Esq.

Representing Staff:
Suzanne G. Amidon, Esq.
Elizabeth Nixon, Esq.

I N D E X

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23
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| COMMENTS: | PAGE |
|-------------------|------|
| By Mr. Warshaw | 8 |
| By Mr. Patch | 9 |
| By Ms. French | 14 |
| By Mr. Olson | 17 |
| By Mr. Button | 32 |
| By Ms. Geiger | 34 |
| By Mr. Labrecque | 36 |
| By Mr. Allegretti | 40 |
| By Ms. Chamberlin | 44 |
| By Mr. Dean | 47 |

1 P R O C E E D I N G

2 CHAIRMAN HONIGBERG: We're
3 here this morning in Docket DE 15-035, the
4 Electric Renewable Portfolio Standards, to
5 consider adjusting the Class III portfolio
6 requirements for 2014 and 2015. We issued an
7 Order of Notice on January 21st, scheduling the
8 hearing.

9 THE COURT REPORTER: Is your
10 mic on?

11 CHAIRMAN HONIGBERG: It is on,
12 but I can't hear it either. How's the volume out
13 there? Can you hear me now? All right.
14 Normally I can hear it better when I'm talking,
15 but right now I can't.

16 I will do you all a favor and
17 will not read from the Order of Notice. Do
18 people have the Order of Notice? Have they had
19 an opportunity to read it? I have extra copies
20 here if anybody hasn't read it and would want it
21 now.

22 (No verbal response)

23 CHAIRMAN HONIGBERG: Good.
24 Then we won't have to read from the Order of

1 Notice. In exchange, I will ask that if you have
2 submitted written comments, please do not read
3 them to us. We have them. There are only a
4 handful, and I will go through them in a minute.
5 If you haven't submitted written comments but
6 have something in writing, you can submit it to
7 us. We will even make copies of it for you. We
8 would ask that you not read it to us. You can
9 summarize, you can highlight, but we don't need
10 to hear a reading of something that is already in
11 writing, just like I'm not going to read the
12 Order of Notice to you.

13 So we have a sign-in sheet.
14 There are a number of names on it. Only some of
15 them have checked that they would like to speak.
16 My intention will be to take them in the order
17 that they signed in. Before I do that, I just
18 want to confirm. I have written comments from
19 Patricia French with Bernstein Shur, who has also
20 filed a motion in this. I have written comments
21 from Unitil, and I have written comments from
22 Lisa Linowes and William Short. Did anybody else
23 submit written comments that we haven't seen yet?

24 MS. AMIDON: Yes.

1 CHAIRMAN HONIGBERG: Ms.
2 Amidon.

3 MS. AMIDON: Thank you. The
4 clerk was kind enough to give me a copy of the
5 docket listings, and there is an omission.

6 On February 6th, Liberty
7 Utilities filed written comments, and I actually
8 have two copies of that letter. John Warshaw is
9 here representing Liberty Utilities, and I can
10 give him this letter, and perhaps at the end of
11 the hearing we can make an adequate number of
12 copies for the Commission. Or if the Commission
13 wants it now, I can ask someone to go make
14 copies.

15 CHAIRMAN HONIGBERG: No,
16 that's okay. I think Mr. Warshaw can probably
17 summarize what the written comments are. Yeah,
18 he probably brought a copy with him.

19 Did anyone else file written
20 comments that we're not aware of who's here?
21 Mr. Patch.

22 MR. PATCH: Yes. On behalf of
23 RESA, we filed some just this morning. I have
24 extra copies here, but I left them at the front

1 desk to be sent in to the service list this
2 morning by e-mail.

3 CHAIRMAN HONIGBERG: Okay. So
4 you'll be able to summarize yours as well.

5 MR. PATCH: Yeah.

6 CHAIRMAN HONIGBERG: Is that
7 everyone now?

8 (No verbal response)

9 CHAIRMAN HONIGBERG: Okay.
10 Good. Thank you.

11 We will probably leave a
12 period after today's hearing for people to submit
13 additional written comments in response to what
14 they've heard or other things that they might
15 want to say. We'll probably give people about a
16 week from today.

17 So, the people who have signed
18 in to speak are: Mr. Patch, Ms. French,
19 Mr. Olson -- Mr. Olson, you usually sit in the
20 back. I'm looking for you back there.

21 MR. OLSON: Mr. Patch took my
22 seat.

23 CHAIRMAN HONIGBERG: All
24 right. Mr. Button, Ms. Geiger, Mr. Labrecque,

1 Mr. Allegretti, Ms. Chamberlin and Mr. Dean. Am
2 I missing anybody? Mr. Warshaw.

3 MR. WARSHAW: I thought our
4 comments were already filed. So, since they
5 weren't, I might as well summarize it for the
6 hearing.

7 CHAIRMAN HONIGBERG: Well,
8 conveniently, Mr. Warshaw, you are actually first
9 on this sign-up list. So why don't you find a
10 microphone that's on and you can go first.

11 MR. WARSHAW: All right. My
12 name is John Warshaw. I am the manager of
13 electric supply for Liberty Utilities. And we --
14 our comments are that we would like to see the
15 Class III obligations reduced to zero for the
16 obligation years 2014 and 2015. The reason is
17 that we have -- we, and I would speculate most
18 other load-serving entities in New Hampshire,
19 have not been able to purchase any Class III
20 resources over the last couple of years, and as a
21 result, we've had to instead make ACPs to the
22 State to meet our RPS obligations.

23 CHAIRMAN HONIGBERG: Thank
24 you, Mr. Warshaw.

1 Mr. Patch, followed by
2 Ms. French.

3 MR. PATCH: Here's a copy of
4 the written comments that we submitted this
5 morning.

6 For the record, my name is
7 Doug Patch. Is the microphone working? I can't
8 tell if it's working either.

9 Doug Patch with the law firm
10 of Orr & Reno, on behalf of the Retail Energy
11 Supply Association.

12 As I think you know, RESA's a
13 non-profit organization and represents the
14 interests of its members in regulatory
15 proceedings. Several RESA members are licensed
16 to serve customers here in the state of New
17 Hampshire, and as such, they are providers under
18 the RPS law, 362-F:2, XIV, and would be directly
19 impacted by the adjustments to the Class III
20 minimum requirements.

21 Just a couple of things that I
22 wanted to mention. As I think you know, the
23 Commission has in past years, in a couple of
24 different orders, first of all, in Order 25,484,

1 and then later adjusted in 25,674 the compliance
2 requirements, Class III requirements for
3 compliance years '12 and '13. And the results of
4 that are noted in the October 2014 annual report,
5 the New Hampshire Renewable Energy Fund Annual
6 Report, where it notes that the Commission -- the
7 Class III revenues in 2014 declined from 4.6
8 million to 1.7 million. So, obviously, actions
9 like this that the Commission has taken in the
10 past have the desired effect, which I think is to
11 try to reduce, ultimately for customers, payments
12 into the Compliance Fund. And the Commission
13 noted that, in fact, in Order 25,484, that it was
14 mindful that electric ratepayers ultimately pay
15 for the cost of RPS compliance through their
16 electric rates. And so -- but, you know, perhaps
17 I think that's an important issue just to keep in
18 mind. It's obviously one that the legislature is
19 dealing with, and so it's something to keep in
20 mind.

21 It's also clear, I think from
22 the Commission's Order of Notice and from the
23 experience noted in those prior two orders, that
24 in fact there's a scarcity of these -- of the

1 ability to be able to get the Class III RECs.
2 And so, given that, it seems to make sense from
3 RESA's perspective for the Commission to continue
4 what it has done in those prior two orders.

5 The specific recommendation
6 that is included in the written comments is to go
7 even lower than what was done in the last order,
8 25,674, which I think reduced for compliance year
9 2013 to .5 percent. And so RESA has suggested
10 reducing it to .25 percent. And in light of the
11 fact that the Commission in the Order of Notice
12 mentioned both compliance years '14 and '15, the
13 suggestion is to do that for both years. They
14 would not be opposed to the recommendation that I
15 think Liberty and Unitil have made, which is to
16 reduce it to zero. But in the written comments,
17 we had suggested .25 percent. I guess -- and the
18 standard that the Commission has used in the
19 prior orders is whether it's just and reasonable
20 and for the public interest. And we would submit
21 that it is, that it meets that requirement.

22 The other thing that I would
23 like to say, and I think there will be more
24 testimony about the scarcity of the RECs, but I

1 think that's pretty apparent from the record in
2 prior proceedings, from the report that the
3 Commission issued and from what's referenced in
4 the Order of Notice. And I think that's
5 important. Obviously, the standard in the
6 statute -- and the statute is the one referenced
7 in the Order of Notice, 362-F:4, VI, which is the
8 Class III adjustment which allows the Commission
9 to reduce that, provided that it meets the
10 specific requirement contained in that statute,
11 you know, the 85 to 90 [sic] percent -- equal to
12 an amount between 85 to 90 percent of the
13 reasonably expected potential annual output of
14 available sources. So, anyway, I think that's
15 important to note.

16 And then, finally, ENH, when
17 they submitted their comments, they submitted a
18 motion for the Commission to also take up the
19 Class I issue, and then I think they also said II
20 and Class IV as well. The Order of Notice,
21 interestingly enough, and the title to it,
22 references the statute that gives the Commission
23 the authority for Class I, which is V. It's a
24 different authority, as I think you well know,

1 than Class VI. You don't have the authority to
2 reduce, but you can delay for a year, I believe
3 is what V says. And RESA would support doing
4 that. So they, in essence, support the motion
5 that ENH has submitted. And we reference that
6 briefly in our comments as well. Thank you.

7 CHAIRMAN HONIGBERG: Mr. Scott.

8 CMSR. SCOTT: Thank you. Good
9 morning, Mr. Patch. Obviously, as you reference,
10 our Order of Notice talks about 2014 and 2015.
11 Part of that -- and you referenced the
12 calculation that would need to be made, 85 to
13 95 percent of the reasonable expected potential,
14 et cetera. So that requires us to use a little
15 bit of a crystal ball for 2015 and take a guess
16 at what would be available for both biomass and
17 landfill gas effectively for those classes.

18 And Mr. Warshaw, I can
19 probably ask you the same thing.

20 But do you have any idea of
21 the availability moving forward of those
22 classes -- it's all Class III we're talking
23 about -- but those categories, if you will?

24 MR. PATCH: Well, I think,

1 based on the experience that we've seen so far,
2 it seems likely that it would remain the same for
3 another year. And, of course, if the Commission
4 were to do something in an order here for both of
5 those years, you can always come back next year
6 and make another adjustment, in the event that it
7 looked like things were not turning out to be the
8 way you expected it to be. I don't have a
9 crystal ball, but I think the membership agrees
10 and anticipates that it will probably be very
11 similar, you know, next year.

12 CMSR. SCOTT: And since I did
13 use your name, Mr. Warshaw, do you have any
14 other perspective?

15 MR. WARSHAW: I agree with Mr.
16 Patch. The past experience is probably a good
17 indicator of what we would be seeing, as far as
18 availability for New Hampshire Class III RECs in
19 2014 and in 2015.

20 CMSR. SCOTT: Thank you.

21 CHAIRMAN HONIGBERG: Ms.
22 French, followed by Mr. Olson.

23 MS. FRENCH: Thank you,
24 Chairman. Do I have to push the button, or can

1 you hear me?

2 CHAIRMAN HONIGBERG: If the
3 red light is on, then you're on.

4 THE COURT REPORTER: And just
5 speak directly into the microphone, please.

6 MS. FRENCH: There you go.
7 Sound better?

8 I'm Patricia French with the
9 law firm of Bernstein Shur, Portland, Maine. ENH
10 did file its comments, so I'll just provide a
11 brief summary here. And thank you for
12 recognizing the motion that we filed as well last
13 night.

14 Like the others that have
15 submitted comments, we went into the market in
16 December 2014 and also were unable to locate RECs
17 for Class III sources that were --

18 THE COURT REPORTER: Can you
19 slow down, please, and just --

20 MS. FRENCH: Oh, I'm sorry.

21 THE COURT REPORTER: That's
22 all right.

23 MS. FRENCH: So there were no
24 resources that were priced below the ACP that

1 were available to ENH in December of 2014.

2 One of the points that we
3 wanted to highlight from our comments -- and with
4 me today is Muriel Leclerc, who is the regulatory
5 and compliance manager for ENH Power -- is that
6 the consequence of the market is that electric
7 suppliers are actually pricing forward the
8 electricity for ratepayers at about a cent per
9 kilowatt above in order to compensate or recover
10 the cost associated with the ACP because they
11 know that they're not going to be able to find
12 resources for under that price. So that is a
13 cost that ratepayers are bearing without the
14 benefit of clean energy, simply to recover the
15 cost associated with the compliance maintenance.

16 And then, as we point out in
17 our motion, the RECs -- finding RECs for all the
18 other class sources are equally as difficult to
19 obtain, and they are priced as well as the ACP.
20 By 2016, ENH Power customers will see an increase
21 in electric rates of approximately \$3 million
22 associated only with the recovery of the ACP if
23 in fact the legislature doesn't adjust either the
24 ACP or the RPS standards to compensate for that.

1 And we'd be happy later to provide the backup for
2 the calculations that we've cited in our motion
3 and in our comments. Thank you.

4 CHAIRMAN HONIGBERG: Mr.
5 Olson, followed by Mr. Button.

6 MR. OLSON: Is this on?

7 CHAIRMAN HONIGBERG: Sounds
8 like it.

9 MR. OLSON: In our comments in
10 Docket 13-021, on behalf of the six small biomass
11 plants that I represent, some of which are
12 Class III New Hampshire REC sellers, and many of
13 which are Class I Connecticut REC sellers as
14 well, we indicated that those facilities were not
15 likely to produce significant, if any, Class III
16 REC sales in 2013 and in 2014 due to the higher
17 Connecticut alternative compliance payment.

18 In our comments in Docket
19 14-104, we indicated the same. We noted that the
20 rate differential between Connecticut Class I and
21 New Hampshire Class III continues to favor sales
22 from those biomass facilities into the
23 Connecticut RPS in 2014. And that differential
24 in 2014 is roughly \$31, \$32 in New Hampshire

1 versus a \$55 ACP in Connecticut. And that's
2 really the crux of the issue, in terms of where
3 RECs go -- meaning, they're not going into the
4 New Hampshire RPS.

5 So, our position with respect
6 to the 2014 compliance year hasn't changed from
7 the comments we submitted in the docket in 2013
8 and in the docket in 2014. My clients that are
9 New Hampshire Class III-eligible do not expect to
10 utilize the New Hampshire Class III market in
11 2014, given the great disparity in ACP and
12 resulting REC prices in the Connecticut market.

13 Our comments in Docket 14-104
14 also noted that it was unclear whether the New
15 Hampshire Class III and Connecticut Class I ACP
16 rate differential could continue into the 2015
17 compliance year. And that was really driven by
18 two factors. First, the ACP rate differential in
19 2015 has narrowed significantly. So the
20 Connecticut ACP remains at \$55, while in 2014 the
21 New Hampshire ACP, because of a change in
22 legislation, moved to \$45; so we have a \$10 ACP
23 differential now.

24 The second factor that led to

1 some uncertainty is that in 2013 the Connecticut
2 legislature passed a law indicating, or rather
3 directing that its Department of Energy and
4 Environmental Protection produce a schedule that
5 was supposed to be effective January 1, 2015,
6 that would phase out the value of RECs for a
7 number of facilities, including the New Hampshire
8 biomass facilities. So, in effect, we were
9 looking at, while the ACP would remain at \$55,
10 the amount of that you would get if you were a
11 New Hampshire biomass Class I Connecticut
12 facility would start to phase down. With the \$10
13 rate differential on the ACP, that might have
14 created a situation where RECs for the 2015
15 compliance year would come into the New Hampshire
16 market. However, the Connecticut agency has not
17 implemented the statutory schedule. Instead,
18 they produced a draft document, their version of
19 an integrated resource plan, and have indicated
20 the final plan will not be out until March of
21 this year.

22 In the draft, the Connecticut
23 agency has proposed that they not implement the
24 rate phase-down for biomass facilities and

1 instead monitor the supply situation in the
2 Connecticut RPS and defer acting until 2018.
3 Now, that situation can change at any time. I'm
4 mindful that that agency is under a statutory
5 requirement to have implemented a schedule
6 effective January 1, 2015 for a phase-down and
7 are in a process that has produced a draft but
8 not a final plan. Notwithstanding that, our
9 position is that, with respect to the 2015
10 compliance year, that it's more likely that the
11 New Hampshire biomass plants will continue to
12 access that Connecticut market as they deal with
13 the 2014 compliance year.

14 So my recommendation is -- and
15 I do not -- and I will discuss this in a
16 moment -- I do not subscribe to the zero-percent
17 solution. My recommendation for 2014 is to do
18 what the Commission did in 2013, and that is to
19 reduce the purchase percentage for year 2014 to
20 .5 percent, half of a percent. My recommendation
21 for compliance year 2015 is to make a similar
22 adjustment: Reduce the 8 percent to .5 percent.
23 So, the 8 percent would become half a percent.

24 Now, I say that for two

1 reasons. I don't represent all of the potential
2 Class III sellers. I'm mindful that if I look at
3 the Sustainable Energy Division's February 5th,
4 2015 REC Providers Report, it lists all of the
5 facilities that have been certified as sellers
6 into the New Hampshire RPS. So there's still
7 about 81 megawatts of landfill gas, and I don't
8 believe they're represented at this hearing. So
9 I have no idea where those facilities within the
10 2015 compliance year, which I think runs well
11 into 2016, may choose to sell some of their RECs.

12 So, with that uncertainty, I
13 think it's good policy, if you will, to leave
14 some room rather than approaching the
15 zero-percent solution -- "some room" meaning
16 half-a-percent solution. I don't think half a
17 percent, when I look at some of the data that was
18 submitted in the utilities' comments, leaves us
19 in an egregious situation with respect to
20 potential ACP payments.

21 So, for example: If look at
22 the Unitil comments that were filed in this
23 docket, they paid about \$121,000 in ACP payments
24 in 2013 because the Commission had reduced the

1 percentage to half a percent. Assuming I'm
2 correctly understanding the numbers they
3 presented in their chart and their comments,
4 which is always a question, if I use the same
5 load assumption that they have implicit in their
6 numbers in 2013, and I use the 2014's ACP of
7 \$31.93, the Unutil payment potentially for ACP
8 payments in 2014, if we went to the half-percent
9 solution, would be \$123,000, significantly less
10 than the \$746,000 Unutil indicates they might pay
11 if we make no adjustment to the ACP.

12 If I do a similar calculation
13 for 2015 for Unutil, using the ACP in 2015 of
14 \$45, but holding that load constant, the payment
15 potentially for an ACP set of payments that year
16 would be \$173,700, again, significantly less than
17 the \$2,784,000 projected by Unutil if we make no
18 change to the ACP. So I think you can see that
19 moving to a half-percent solution alleviates a
20 lot of potential ACP payments but still leaves
21 some money in the ACP category, potentially, that
22 would move into the renewable energy fund and
23 fulfill the purposes of the fund.

24 And I think that's an

1 important point when we think about the directive
2 that the legislature has given the Commission in
3 its discretion to exercise its rights under
4 Section 4 to adjust Class III percentages. But
5 also, the legislature, in Section 10 of the
6 statute, talks about the ACP payments and notes
7 in Section 10, Paragraph II that, in lieu of
8 meeting the portfolio requirements for any given
9 year, if sufficient RECs are not otherwise
10 available, an electricity provider may make
11 payment of the alternative compliance payment.

12 The alternative compliance
13 payment is not a penalty. It is, as the
14 legislature says, it's an alternative method for
15 complying with the statute if RECs are not
16 otherwise adequately available in terms of the
17 supply. So it's not a penalty. I know -- I
18 think, if I recall, I think it might have been
19 the ENH comments referred to it as a "penalty."
20 It's an alternative method of compliance that the
21 legislature explicitly put in, recognizing that
22 there may be times when the RECs, in terms of
23 supply, aren't there. I think it's important to
24 try and balance the two statutory provisions,

1 particularly when we don't have perfect
2 information about what availability might be,
3 particularly in the 2015 year. You know, if I
4 look at Section 4 of the statute, there are three
5 sort of factors that you look at: The available
6 eligible sources, their annual output, and the
7 demand from the programs in the other states upon
8 those sources. And I think it's -- that, to me,
9 much like we do in other areas of energy law and
10 public utility law, that's not a particular plan.
11 That's more reasonably a range of outcomes. And
12 so if I think of it as a range of outcomes, and I
13 think about the ACP as an alternative compliance
14 method, then I'm comfortable saying the
15 zero-percent solution is not the best solution.
16 It's better to be at, for example, the
17 half-percent solution, or something around that
18 number, particularly when you look at the
19 potential ACP payments. They don't produce
20 egregious amounts.

21 The same can be said for
22 Liberty. They didn't really provide in their
23 comments any data about where they expect to be,
24 in terms of potential alternative compliance

1 payments in the 2014 and 2015 year. I do note
2 that in 2013 they made about \$87,000 of
3 alternative compliance payments for Class III.
4 That's obviously less than what was paid by
5 Unitil for its Class III compliance payments that
6 year. So if I just go back to the calculation I
7 did for Unitil, I know that the Liberty
8 calculation, assuming their load has not grown
9 exponentially, will be significantly less than
10 the numbers I calculated for Unitil.

11 When it comes to ENH Power,
12 their comments don't really say anything about
13 the Class III ACPs they expect to pay in 2014 and
14 2013. The best I can say is they started selling
15 power in New Hampshire, according to their
16 comments, in August of 2013. Well, what that
17 tells me is they paid very little ACP payments to
18 date, since we're coming up on the closing of the
19 2014 year. Most of their comments, I think,
20 focus on 2016. They're concerned about 2014 and
21 2015, but they sort of drift over to the expected
22 payment in 2016 might be some \$3 million. But
23 that's for all four classes of the RPS. I don't
24 know how they came up with the number. And given

1 the Order of Notice, I think talking about 2016
2 is beyond the Order of Notice. And certainly
3 talking about the need to do something in 2016,
4 or even sort of extrapolating it back to 2014 and
5 2015 because of what you think will happen in
6 2016 because of the four classes is beyond the
7 scope of the docket.

8 Now, I know they've filed a
9 motion. And I think under the Commission rules
10 we have 10 days to file an objection to that
11 motion. I will say, without getting into the
12 merits of the motion, I find it to be a bit of an
13 odd motion to be filed in a docket that is --
14 that has publicly noticed what's known as "a
15 public comment hearing" or a "public statement
16 hearing," which is not an evidentiary hearing.
17 And the motion itself isn't so much about Class
18 III, which is the subject of the Order of Notice,
19 it's about expanding this docket to address
20 Classes I, II and IV, which is not the subject of
21 the Order of Notice. Looking around the room,
22 I'm not sure there's anyone here who would be
23 interested, other than the one facility I have in
24 Class I, in Class I, II or IV. So I don't think

1 they really have the proper notice with respect
2 to the motion. And like I said, we have a 10-day
3 objection period. We may file an objection to
4 the motion raising other substantive comments. I
5 think some of the relief requested is pretty
6 vague and ambitious in terms of Commission
7 jurisdiction.

8 With that, I think I will
9 leave the rest of my comments with respect to the
10 motion for a potential objection.

11 CHAIRMAN HONIGBERG: Mr. Scott.

12 CMSR. SCOTT: Thank you for
13 your comments and good morning. Couple questions
14 for you.

15 As you said, you represent six
16 biomass facilities.

17 MR. OLSON: Yes.

18 CMSR. SCOTT: So, for your
19 clients, I'm curious: When we reduce the
20 percentage, like as we have in -- for instance,
21 if we do as some suggest and went to zero, what
22 signal are we sending to them? Is that a -- does
23 that send a negative signal, as far as -- let me
24 back up.

1 As you're aware, I think the
2 Class III requirement, obviously it's for
3 existing facilities, but yet the percentage
4 ratchets up. So on its face it's kind of
5 counterintuitive. So my understanding is the
6 intent was to provide an incentive for these
7 facilities to qualify.

8 So, by taking the actions that
9 we have and are contemplating, are we sending an
10 inappropriate signal for those facilities do you
11 think?

12 MR. OLSON: Let me sort of
13 break it down in some separate pieces, if you
14 will, Commissioner.

15 First, the percentage
16 ratcheting up, when you look at the early years
17 in the RPS, the percentage does ratchet up,
18 because the understanding was, given how very low
19 the ACP was for that Class III, those facilities
20 were likely to be in Connecticut Class I or other
21 markets that were higher. So the percentage was
22 kept lower in those years. When we came to the
23 2014, and certainly by the 2015 year, because of
24 what was going on in Connecticut, where

1 Connecticut, in the legislature, actually singled
2 out biomass plants and indicated that wasn't
3 something they wanted to continue to support, the
4 legislature increased the percentage. And it
5 doesn't increase from 2015. It stays flat at
6 that 8 percent. So they increased it to account
7 for the potential of the New Hampshire biomass
8 plants all needing to be in that Class III
9 market. So the percentage isn't too far off if
10 all of those facilities -- plus, I think, as you
11 may be aware from the Commission's own order, the
12 Bridgewater facility went through a particulate
13 matter proceeding and is now a Class III
14 facility, and there are two out-of-state
15 facilities: One in Vermont and one in Fitchburg,
16 Mass. that are also Class III facilities. So
17 when you start to look at that percentage and you
18 think about the number of facilities, I don't
19 find it expanding at a level that's unreasonable,
20 nor does it increase from that. It sort of says
21 that's what the market might bear. But that all
22 depends on what the pricing is. So that's
23 another reason why the legislature tried to get a
24 little closer to the \$55 market that Connecticut

1 represents.

2 With respect to the signal, my
3 clients are very mindful of both the value of
4 having the New Hampshire Class III market and the
5 value of having the Connecticut Class I market.
6 Ideally, they would like both markets to exist.
7 And these proceedings that we do annually here at
8 the Commission, in my clients' view, represent a
9 reasonable way to make the adjustments if the
10 Connecticut market has remained the market of
11 choice. If the Connecticut market starts to
12 implement that phase-down on the REC value and
13 drives the REC price to a point where it's
14 uneconomical for us to sell into that market
15 versus the New Hampshire market, they would come
16 back to the New Hampshire market.

17 So I don't think my clients
18 view the change particularly -- I'm here
19 proposing the change. I don't think they view it
20 as a negative signal. I think they view it as
21 good policy to have a self-correcting mechanism
22 that everyone can build a consensus around.

23 The potential negative signal
24 isn't to my clients; it's the signal to, frankly,

1 Connecticut. The concern being, in RPS programs,
2 what's happened over time I think is states start
3 to look provincial. They start to say, "Why am I
4 spending my dollars to support biomass projects
5 in New Hampshire when I should be doing something
6 about promoting renewable energy jobs in
7 Connecticut?" That's what I call being
8 "provincial" about your RPS.

9 If we drive our RPS down to
10 zero, then I think there's a potential -- this is
11 speculation on my part. But I think there's a
12 potential that that gets used elsewhere, with the
13 mindset of New Hampshire doesn't really want to
14 support its program; it wants other states to
15 support its program. So that's a potential
16 negative signal. But in terms of making the
17 adjustment, I think they're okay, certainly with
18 an adjustment to half a percent in 2014 and 2015.
19 And we just need to see what the future years
20 bring. I'm sure we'll be back here in another
21 proceeding next year to look at the subsequent
22 year.

23 CMSR. SCOTT: Thank you.

24 CHAIRMAN HONIGBERG: Mr.

1 Button, followed by Ms. Geiger.

2 MR. BUTTON: Yes, my name is
3 Paul Button. I am coming here as a private
4 citizen. I'm a BPI-certified energy auditor.
5 I'm a licensed electrician in Massachusetts and
6 New Hampshire, and I'm an independent monitor for
7 the New Hampshire PUC for Class II solar
8 photovoltaics. I wish to thank the Commission
9 for this opportunity to comment.

10 The discussion here today is
11 about letting the utilities off the hook for a
12 situation that they themselves created: A
13 self-fulfilling prophecy, as it were. Renewable
14 energy doesn't work in New Hampshire they say,
15 and we'll prove it. And they have succeeded to a
16 point, which is why we're here today, by
17 overwhelming our legislators, and especially some
18 legislators of a certain ilk with eager ears,
19 with wave after wave of motions and delays
20 brought forward by their armies of lawyers and
21 lobbyists, the utilities have convinced the
22 legislators that the ACP is a stealth tax. It's
23 nothing of the sort. It's a fine that forces the
24 utilities to change their cozy business model.

1 Everyone loves constancy in their lives. But to
2 upend the lives of the many for the comfort of
3 the few is not patriotic. If the utilities had
4 not bucked the law and had looked a little into
5 the future beyond their bottom line, we would not
6 be having this discussion. The utilities have
7 created a situation where the Renewable Energy
8 Fund is always up for grabs, to be used to
9 balance the state budget, when it is, by law, a
10 dedicated fund. The legislature then crows about
11 how wonderful an accomplishment this is and fails
12 to acknowledge the damage the misdirection of
13 those funds actually does to the alternative
14 energy market in New Hampshire.

15 So, here we are again today
16 listening to the whining and the crying. The
17 RECs are being sold elsewhere in the states who
18 are members of RGGI. And why should they not be?
19 The utilities have succeeded in getting our
20 legislature to lower the ACP to a level that is
21 laughable. The utilities can then pay a low
22 price for the RECs they can get or pay a fine,
23 which is a joke. And if they can't buy RECs,
24 they can actually steal unclaimed production.

1 How much better of a world would they like to
2 create for themselves? They dug the hole that
3 we're in today. As a New Hampshire citizen
4 working for the good of the people who have made
5 a mindful investment in the future of our state,
6 I say give them nothing. No breaks. No pity.
7 We don't hear them whining about Class II RECs,
8 do we? No, because I was able to report almost a
9 gigawatt hour of solar photovoltaic power for
10 2014 with a little effort on my part.

11 Renewable energy does work in
12 New Hampshire. The future is here. And I say to
13 the utilities, "Deal with it, and please stop
14 digging a hole."

15 CHAIRMAN HONIGBERG: Ms.
16 Geiger, followed by Mr. Labrecque.

17 MS. GEIGER: Thank you, Mr.
18 Chairman. For the record, I'm Susan Geiger from
19 the law firm of Orr & Reno, representing Unitil
20 Energy Systems, Inc. My red light's on, but
21 apparently this microphone's not working.

22 CHAIRMAN HONIGBERG: Let's go
23 off the record for a minute.

24 (Discussion off the record)

1 CHAIRMAN HONIGBERG: We can go
2 back on the record. Attorney Geiger.

3 MS. GEIGER: Thank you very
4 much. On behalf of Unitil Energy Systems, Inc.,
5 we have filed written comments in this docket,
6 and so I won't repeat them here, other than to
7 note the bottom line in those comments is
8 essentially the same as what Liberty has
9 indicated to the Commission, in terms of
10 requesting that the percentages for the
11 requirements for the Class III compliance be
12 reduced to zero for both compliance years 2014
13 and 2015. And with me today from the Company is
14 Todd Bohan who is available to answer any
15 questions that you might have about the written
16 comments that Unitil has filed, or any other
17 issues that you've heard raised so far this
18 morning. Thank you.

19 CHAIRMAN HONIGBERG: Mr. Scott.

20 CMSR. SCOTT: Just to be fair,
21 since I asked Mr. Warshaw a question, do you
22 remember the question I asked him? I'm just
23 curious if you had any different response.

24 MR. BOHAN: I don't think I

1 have anything different to add to that. If I
2 recall your question, it was what is our
3 expectation about being able to acquire Class III
4 RECs --

5 (Court Reporter interrupts.)

6 MR. BOHAN: If I recall your
7 question correctly, it was if we expect any
8 change in the ability to acquire Class III RECs
9 for compliance years 2014 and 2015. And as of
10 this date, I do not expect there to be any
11 change. As summarized in our comments, we have,
12 over the past four-plus years, attempted to
13 acquire these RECs and have been unsuccessful on
14 a number of occasions. And I expect that to
15 continue at least through the end of this year.

16 CMSR. SCOTT: Thank you.

17 CHAIRMAN HONIGBERG: Thank
18 you, Mr. Bohan.

19 Mr. Labrecque, followed by Mr.
20 Allegretti.

21 MR. LABRECQUE: Thank you. My
22 name's Richard Labrecque. I'm the manager of
23 Distributed Generation for Public Service of New
24 Hampshire, doing business as Eversource Energy.

1 I'd like to echo and agree,
2 for the most part, with the written comments and
3 testimony of the other utilities here today.
4 PSNH has not been able to find a single Class III
5 REC through any of our solicitations since 2011.
6 We don't anticipate being able to find any 2014
7 RECs, and so far we haven't found any 2015 RECs
8 either. Some of the comments from Mr. Olson I
9 also agree with, that there would appear to be
10 some slight potential that 2015 RECs materialize
11 at some point in the next year or so. But I
12 don't see any changes in the market conditions
13 occurring right now. So I believe there's plenty
14 of evidence to suggest that the 2014 percentage
15 should be set to zero. 2015, whether it's zero
16 or half a percent is not particularly important
17 or significant, in my opinion, but I do want to
18 stress that we do believe that some action should
19 be taken to reduce the 2015 percentage. And I
20 say this, in part, because of some of the
21 comments raised by ENH, in that load-serving
22 entities will put into the rates they charge
23 their customers the assumption or the estimate of
24 what they believe it's going to cost. So, for

1 example: PSNH has already put, I believe, an
2 estimated \$14 million of ACP payments into their
3 2015 default service rate just for Class III
4 alone. If the Commission takes action and
5 reduces it to half a percent or to zero, we would
6 remove that \$14 million from our annual revenue
7 requirements, if you will, the next time we
8 adjust our 2015 ES rate. The retail suppliers,
9 on the other hand, may not be in a position to do
10 that, such that any customer being served by a
11 retail supplier in 2015 is probably paying, you
12 know, I'm not sure if it's a cent a kilowatt hour
13 or exactly what the number is, but they're paying
14 an adder to handle Class III. And they won't --
15 the sooner the Commission acts, the sooner all
16 suppliers will be able to adjust their rate
17 projections that they offer to customers. So the
18 customers will see that benefit. If the
19 Commission doesn't act, I estimate approximately
20 \$10 million of ACP payments statewide for 2014,
21 and in 2015 that number would be approximately
22 \$40 million. We also don't believe that there's
23 any risk if the Commission acts for 2014 or 2015.
24 I don't see any material counteraction coming

1 from the state of Connecticut. In their resource
2 plan that they recently issued, one of the
3 reasons they stated for deferring this phase-out
4 of biomass eligibility spoke to their general
5 support to keep existing, especially existing
6 renewable power plants, online and operating, not
7 so much to deal with their REC market issues, but
8 just energy and capacity market issues in
9 general. So I believe they're supportive of
10 actions to keep the New Hampshire biomass units
11 running. And I don't think any action by the
12 Commission in this docket, even setting the
13 percentages to zero through 2015, would have a
14 material impact.

15 I also just want to state for
16 the record that PSNH is on record in other
17 proceedings stating that we're not in favor of
18 the General Fund taking money out of the
19 Renewable Energy Fund for general budget
20 purposes. So I just wanted to reiterate that
21 here today. Thank you.

22 CHAIRMAN HONIGBERG: Mr.
23 Allegretti, followed by Ms. Chamberlin.

24 MR. ALLEGRETTI: Thank you,

1 Mr. Chairman. Dan Allegretti, on behalf of
2 Exelon New Hampshire companies, which include
3 Constellation New Energy and Integrys Energy
4 Services. We are members of the Retail Energy
5 Supply Association, and although we have not
6 submitted comments in writing, we did participate
7 in the development of the recent comments and
8 fully support both those written comments, as
9 well as the remarks of Mr. Patch.

10 I have personally testified
11 before this Commission for approximately two
12 decades on and off, and I don't remember any
13 other issue in which I was in full agreement with
14 all three of New Hampshire's utilities. It's
15 pretty extraordinary.

16 I can confirm for the record
17 the comments of Mr. Warshaw and Mr. Labrecque
18 with regard to the non-availability of Class III
19 RECs in the marketplace. I did consult with the
20 portfolio managers on our trading desk, and they
21 confirmed the same experience that Mr. Warshaw
22 and Mr. Labrecque reported. Clearly, these RECs,
23 to the extent that they are produced, are being
24 sold at a higher price in an out-of-state market.

1 I did want to address
2 Commissioner Scott's question about the
3 likelihood of changes in the Class III market.
4 We certainly follow the press releases, the
5 announcements, the regional developments around
6 projects that have been announced that would
7 potentially increase the supply of any form of
8 generation. I'm not aware of any announcements
9 with regard to any significant increase that we
10 can expect with regard to Class III. That
11 doesn't mean people aren't developing projects
12 they have not yet disclosed. But I'm not aware
13 of any reason to expect an increase in supply,
14 and I think certainly the view from our trading
15 desk is to not anticipate one at this time.

16 I did want to comment on Mr.
17 Olson's remark, that dropping the requirement to
18 zero sent the wrong signal to states like
19 Connecticut. RESA had suggested cutting the
20 percentage in half, although I find the arguments
21 raised by the utilities today to be, and ENH as
22 well, to be pretty persuasive, that if you can't
23 buy it, it really does simply become much like a
24 tax on electricity. And I think there are

1 compelling reasons to drop it to zero. I don't
2 believe, based on my experience, that state RPS
3 policies are driven by a sense of interstate
4 commodity with fellow New England states and
5 their RPS. They're really driven more by
6 environmental policy and the sense that
7 developing renewable resources within a region
8 where we all breathe the same air has a long-term
9 environmental benefit. And so I've certainly
10 not -- I spent a lot of time in the Connecticut
11 state house on these issues. I certainly have
12 not heard discussions that would lead me to form
13 a similar view as the opinion Mr. Olson expressed
14 on that.

15 I also wanted to comment on
16 the ENH motion. And again, Mr. Olson's comments
17 that it's beyond the scope of this proceeding,
18 that may or may not be the case. It's certainly
19 something that can be corrected with the issuance
20 of a new notice and the scheduling of a new
21 hearing. I do think that this hearing is an
22 appropriate time to at least raise the public
23 policy issue. You know, there's an interesting
24 interplay of public policy behind an RPS. On the

1 one hand, there's a desire to support and
2 encourage renewable energy generation within the
3 region. It has environmental benefits. There
4 are economic development benefits. There are
5 reasons to support it. But I think we're all
6 aware of the concept that it's not the least-cost
7 energy source. If it were, there would be no
8 need for an RPS. It would simply succeed on its
9 own in the market. And so when we implement the
10 RPS at the state level, we're asking consumers --
11 we're requiring consumers to pay more for their
12 electricity to support these policies. And the
13 alternate compliance payment represents a
14 balance. It sets a limit on how much more we're
15 willing to ask consumers to pay in order to
16 support these state policies. And I think that
17 interplay is an important one. And where it's
18 possible to reduce the percentage, to reduce the
19 cost burden on consumers without negatively
20 impacting, particularly the in-state support and
21 development of these resources, I think we ought
22 to strive to do so. I think it's an important
23 public policy for this Commission to consider,
24 not just with regard to Class III, but in

1 particular with regard to Class I and where we
2 are with those resources. I think Mr. Olson
3 probably makes a valid point, that notice and
4 opportunity for Class I developers to participate
5 is probably appropriate. But I would encourage
6 the Commission to take up the Class I issue in a
7 separate notice and proceeding as well. I think
8 it's worth examination, and I think there could
9 be consumer benefits without doing harm to the
10 in-state resources. So I would encourage you
11 along those lines.

12 With that, I would be happy to
13 take any questions.

14 CHAIRMAN HONIGBERG: Thank
15 you.

16 Ms. Chamberlin, followed by
17 Mr. Dean.

18 MS. CHAMBERLIN: Thank you.
19 I'm Susan Chamberlin, consumer advocate for the
20 residential ratepayers.

21 We're experiencing high energy
22 rates, in part because of lack of diversity in
23 the generation market. We are over-reliant on
24 natural gas. And there has been continued

1 concern that the market does not value diversity,
2 and one response to that has been to implement
3 these renewable portfolio standards. It's a way
4 for states to fill in some of the diversity gap.
5 And for that reason, I don't agree that these
6 payments should be set at zero. I think the
7 states and New Hampshire needs to continue to
8 support renewable energy development. However,
9 in recognition that the rate impact is
10 significant for customers right now, I do believe
11 that a slight adjustment downward is a good idea,
12 and I would go with keeping the 2014 amount at
13 the .5 percent. So that would stay flat. And
14 then in 2015, I would support a raise to between
15 1 to 3 percent. And the reason that I'm not
16 certain as to whether or not it should be a very
17 modest or a greater increase is that Class III is
18 for existing resources. And I hear the utilities
19 saying that they don't expect this class to grow.
20 I guess that would be my question: Can there be
21 incentives for this class to grow so that more
22 ACP is available? It's simply a market that I
23 don't know that much about. And so if it's not
24 doing its purpose of incenting these entities to

1 exist, because Class III is only for existing
2 generators, then I'm not sure that we want to
3 increase it a great deal. However, it's
4 important to recognize that these payments go
5 into a Renewable Energy Fund that is then used to
6 increase diversity. I mean, that is the whole
7 point of the RPS standard. So, simply zeroing it
8 out in a downturn of the market is not the
9 message that we want to send.

10 So I support a reduction to
11 give some rate relief to customers, but to
12 recognize that it's a long-term investment. It's
13 not a short-term. It's not something that the
14 state should back away from. People should
15 continue to value diversity and that it has a
16 price tag. The alternative is that we will be
17 investing in fossil fuels. And we expect to do
18 some. We do invest and we do subsidize fossil
19 fuels now. Do we want to continue that as our
20 only method, or do we want to use other methods
21 to support other types of generation? And I
22 submit that the RPS is a valuable way to support
23 diversity, and we should continue to do so.

24 CHAIRMAN HONIGBERG: Mr.

1 Scott.

2 CMSR. SCOTT: Thank you for
3 your comments. I just want to make sure I fully
4 understood. So, for 2015, as you mentioned, you
5 question your -- this is my paraphrasing. So if
6 I get it wrong, please correct me. You're
7 questioning if you have enough information
8 yourself to know what the right number should be
9 for 2015, but you started with between 1 and
10 3 percent. So, in no case would you support
11 anything lower than 1 percent; is that correct?

12 MS. CHAMBERLIN: I would
13 certainly not support lower than .5 percent. I
14 don't think it should go down from a flat amount
15 from 2013 to 2014. The question is whether it
16 should go up and how much.

17 CMSR. SCOTT: Thank you.

18 CHAIRMAN HONIGBERG: Mr. Dean.

19 MR. DEAN: Thank you. Good
20 morning. Mark Dean. I'm a lawyer here in
21 Concord, New Hampshire, and I represent the New
22 Hampshire Electric Cooperative. And I guess it's
23 déjà vu all over again. We've had these hearings
24 several times, and I think that the information I

1 have to report will be pretty similar to the past
2 years.

3 The Co-op has essentially met
4 its requirements for all the classes for 2014, or
5 very close to it, and looks like they won't have
6 much difficulty for 2015 either, except for
7 Class III. And Class III is, as it has been for
8 three or four years, zero. So all efforts have
9 produced zero results. In previous dockets I
10 have somewhat unsuccessfully argued that 85 to
11 95 percent of zero is zero. [Laughter] And I
12 will try it again.

13 The view, really, I think if
14 you played the tape back from previous dockets,
15 where I think particularly Mr. Olson brings a
16 great deal of knowledge and insight obviously to
17 the table about this, I would characterize the
18 level of certainty which he's expressed about the
19 non-availability of Class III RECs, both for 2014
20 and 2015, as a greater level of certainty than
21 was stated in the past. So the Co-op's position
22 is, if there is no adjustment -- and I hear the
23 comments around the room. I'm assuming that
24 there will be some adjustment. But if there were

1 no adjustments for 2014, the Co-op would have an
2 ACP of \$656,000 that would get passed on to its
3 members; for 2015, that would be \$2,417,000 that
4 would have to get passed on. So I simply -- from
5 the Co-op members' perspective for rates, I would
6 urge you to set these percentages at, for both
7 years, at zero, or as close to zero as you feel
8 that you comfortably can under the standards you
9 have to evaluate.

10 CHAIRMAN HONIGBERG: Thank
11 you, Mr. Dean.

12 That is the list. Is there
13 anyone who hasn't spoken who would like to add
14 anything?

15 (No response)

16 CHAIRMAN HONIGBERG: Is there
17 anyone who wants to speak again briefly, saying
18 something they haven't already said that they
19 might want to respond? Keep in mind that you
20 will have a chance to file written comments. And
21 those who would like can respond to the motion
22 that was filed. Mr. Olson is correct. Under our
23 rules, there's a 10-day response time. I think
24 for logic in this instance we would set the same

1 date for additional written comments. That would
2 be Monday, February 23rd. So, with that in mind,
3 is there anyone who wants to speak again or for
4 the first time?

5 Commissioner Scott, you had a
6 question?

7 CMSR. SCOTT: Yeah. We
8 haven't heard from Staff, so I thought I'd put
9 them on the spot.

10 You've heard some of the
11 questions I've had. Would like to make sure
12 we've populated the record. And again, we've
13 gotten some good comments on our best guess of
14 supply, especially for 2015, of Class III RECs.
15 Obviously, you know, Mr. Olson has talked about
16 the biomass facilities in New Hampshire. As we
17 mentioned, we don't have the landfill gas
18 community represented here. Do you have any
19 understanding of how the interaction with
20 landfill gas, that Class III component, is
21 projected for the next -- for 2015, anyways?

22 MS. NIXON: Elizabeth Nixon
23 from the PUC. My understanding is, in years
24 past, landfill gas has mainly sold in

1 Massachusetts. Again, like you say, we haven't
2 heard from the landfill gas community, so it's
3 really unsure what will happen in the future. So
4 I would say that's the largest area of
5 uncertainty, given what Mr. Olson said about the
6 Connecticut market. It does seem that that will
7 continue in the years going forward.

8 CMSR. SCOTT: And we're not
9 aware of, at the Staff level, of any additional
10 qualifying sources, at least in New Hampshire --
11 it actually doesn't have to be New Hampshire --
12 but the region of landfill gas?

13 MS. NIXON: Not that I'm aware
14 of.

15 CMSR. SCOTT: Thank you.

16 CHAIRMAN HONIGBERG: Is there
17 anything else we can do for anyone here today?

18 (No verbal response)

19 CHAIRMAN HONIGBERG: All
20 right. I think we will adjourn this hearing. I
21 thank you all for your comments. And you can
22 file additional materials by Monday,
23 February 23rd. And I believe we'll need to put
24 something out there identifying that date because

1 it's not in the Order of Notice. Is that right,
2 Ms. Amidon?

3 MS. AMIDON: Correct. I will
4 take care of that.

5 CHAIRMAN HONIGBERG: All
6 right. Thank you very much. With that, we are
7 adjourned.

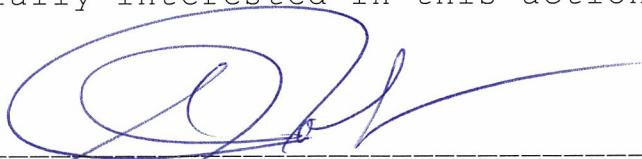
8 (WHEREBY the hearing was adjourned at
9 11:10 a.m.)

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C E R T I F I C A T E

1
2 I, Susan J. Robidas, a Licensed
3 Shorthand Court Reporter and Notary Public
4 of the State of New Hampshire, do hereby
5 certify that the foregoing is a true and
6 accurate transcript of my stenographic
7 notes of these proceedings taken at the
8 place and on the date hereinbefore set
9 forth, to the best of my skill and ability
10 under the conditions present at the time.

11 I further certify that I am neither
12 attorney or counsel for, nor related to or
13 employed by any of the parties to the
14 action; and further, that I am not a
15 relative or employee of any attorney or
16 counsel employed in this case, nor am I
17 financially interested in this action.

18
19 

20 -----
21 Susan J. Robidas, LCR/RPR
22 Licensed Shorthand Court Reporter
23 Registered Professional Reporter
24 N.H. LCR No. 44 (RSA 310-A:173)