

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3 March 10, 2009 - 10:05 a.m.  
4 Public Utilities Commission  
21 South Fruit Street DAY 2  
5 Concord, New Hampshire  
6

7 In re: SITE EVALUATION COMMITTEE:  
8 SEC DOCKET NO. 2008-04:  
9 Application of Granite Reliable  
10 Power, LLC, for a Certificate  
11 of Site and Facility for the  
12 Granite Reliable Power  
13 Windpark in Coos County, New  
14 Hampshire.

15 PRESENT: SITE EVALUATION COMMITTEE:  
16 Thomas B. Getz, Chrmn. Public Utilities Commission  
(Chairman of SEC Subcommittee - Presiding)  
17 Donald Kent Dept. of Resources & Econ. Dev.  
18 Glenn Normandeau, Director Fish & Game Department  
19 Robert Scott, Director DES - Air Resources Division  
20 Christopher Northrop N.H. Office of Energy & Planning  
21 William Janelle Dept. of Transportation  
22 Michael Harrington Public Utilities Commission

23 \* \* \*

24 Counsel for the Committee: Michael J. Iacopino, Esq.

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

1  
2 APPEARANCES:

3 Reptg. Granite Reliable Power, LLC,  
4 and Noble Environmental Power:  
Douglas L. Patch, Esq. (Orr & Reno)  
Susan S. Geiger, Esq. (Orr & Reno)  
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Reptg. Counsel for the Public:  
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Reptg. Industrial Wind Action Group:  
Lisa Linowes

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3	IWA-X-20	USFW Letter from V. Lang to J. Brown (04-23-08)	premarked
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11	IXA-X-27	Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects	premarked
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provided to the U. S. Army Corps  
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16 Petitioner 47 RESERVED (Re: Fire suppression 138  
17 equipment within the turbines,  
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18  
19 \* \* \*  
20 ADMINISTRATIVE NOTICE TAKEN OF THE 90  
21 NH ENERGY PLAN - GOVERNOR'S OFFICE OF  
22 ENERGY AND COMMUNITY SERVICES - NOV. 2002  
23  
24

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1 P R O C E E D I N G S  
2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the hearing in docket 2008-04,  
4 concerning the Application of Granite Reliable Wind Power.  
5 Before we -- Well, let's take appearances to start for the  
6 morning.  
7 MR. PATCH: Good morning, Mr. Chairman,  
8 members of the Committee. Doug Patch and Susan Geiger,  
9 for the Applicant.  
10 CHAIRMAN GETZ: Good morning. And,  
11 okay, well, --  
12 MR. MULHOLLAND: Evan Mulholland, for  
13 Fish & Game.  
14 CHAIRMAN GETZ: Good morning.  
15 DR. PUBLICOVER: David Publicover and  
16 Ken Kimball for the Appalachian Mountain Club.  
17 CHAIRMAN GETZ: Good morning.  
18 MR. ROTH: Peter Roth, Counsel for the  
19 Public.

20 CHAIRMAN GETZ: Good morning. And, I  
21 also note for the record that present today for the  
22 Committee are Mr. Northrop, Mr. Harrington, Mr. Janelle,  
23 and Mr. Kent, as well as myself, Thomas Getz. And, I'll  
24 note, for the morning session, Mr. Normandeau and Mr.

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1 Scott are not present. Both of them are testifying in  
2 their respective Finance Divisions on the budgets for  
3 their agencies this morning, and they will be here for the  
4 afternoon proceedings. And, of course, they will review  
5 the transcript for this morning prior to deliberating on  
6 the Application in this proceeding.

7 Are there any procedural issues we need  
8 to address, before we resume with questions to the  
9 witnesses?

10 MR. ROTH: Of course, yes, sir, there  
11 are. There are two. There's one that's outstanding from  
12 discussion yesterday concerning the testimony of  
13 Mr. Lloyd-Evans, the Counsel for the Public's  
14 ornithologist, who is at a -- some sort of professional  
15 engagement on the West Coast or beyond. He will return  
16 overnight on the 17th -- 18th, and would be available on  
17 the 19th for testimony at that point, cross-examination.

18 The second issue is with respect to Dr.  
19 Sanford, who is Counsel for the Public's -- one of Counsel  
20 for the Public's wetlands experts. And, he and Dr.  
21 Mariani are both present today. But Dr. Sanford has  
22 another engagement at Middlesex County Superior Court on a  
23 takings case, I believe, in Massachusetts all day  
24 tomorrow. But they are both available to appear on

1 Friday. And, I've discussed with the Applicant  
2 rearranging the schedule somewhat to have them either  
3 appear today, while they're here, which would be the  
4 second choice, or on Friday. And, it's satisfactory to  
5 both of us, that is Counsel for the Public and the  
6 Applicant, that Dr. Sanford and Dr. Mariani appear on  
7 Friday for cross-examination. And, I ask that the  
8 Committee rearrange the schedule to accommodate that.

9 CHAIRMAN GETZ: Okay. Well, it seems  
10 unlikely that we would reach them today, if we're going to  
11 keep going through the Applicant's case. I think that's a  
12 fair assumption on my part. But let's see where we get  
13 this morning before I guess we would release them for  
14 today. If they're going to -- if we were going to move  
15 them till Friday, I think it's important that we still  
16 start Friday, as we discussed yesterday, with the Fish &  
17 Game witnesses, Staats and Kelly, and then go to Ms.  
18 Keene. Then, I think that leads us to, on Wednesday, the  
19 notion was to start with the LaFrance/Lobdell panel, and I  
20 think they should be followed then by Dr. Publicover and  
21 Ms. Linowes, to work them in on Wednesday. Is there any  
22 concerns about that order of business?

23 MR. PATCH: No.

24 MR. ROTH: The only -- I guess I'd add a  
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1 sort of sub caveat. Dr. Mariani has an appearance in a  
2 proceeding in Lexington, Massachusetts this evening at  
3 7:00. So, in terms of his being released at some point  
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4 today, he would need to be on the road by no later than  
5 4:30 or 5:00.

6 CHAIRMAN GETZ: Okay. Well, I would  
7 say, at the lunch recess we'll know, I think, whether we  
8 can release him or try to do it today, because we'll see  
9 how far this morning's cross-examination goes.

10 With Mr. Lloyd-Evans, any comment from  
11 other parties about trying to deal with him on the 19th?  
12 I think what --

13 MR. PATCH: I mean, obviously, if there  
14 are a way to do him before the 19th, that would be the  
15 preferable way to do it, just because of the -- I mean, I  
16 think it was being reserved just for closing arguments.  
17 But I don't know if, for sure, there's no opportunity for  
18 him either Friday or sometime next week, even with the  
19 financial witnesses on Monday or Tuesday, to fit him in  
20 there.

21 CHAIRMAN GETZ: Well, I think the point  
22 was he was out of the country. You said "beyond the West  
23 Coast"?

24 MR. ROTH: He's in Hawaii, I'm  
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9

[WITNESS PANEL: Decker|Lyons]  
1 embarrassed to say. I wish he were in Alaska, but he's in  
2 Hawaii. And, he will be doing an overnight flight I guess  
3 on the 17th. So, he won't be here for the dates of the  
4 financial witnesses.

5 CHAIRMAN GETZ: Okay. Well, at a  
6 minimum, I think we need to -- during the lunch recess, I  
7 would ask the parties to discuss what type of cross there  
8 is for him, so we can make some plans. The idea at this

9 point was to have the closing arguments at 3:00. If we're  
10 going to have his cross-examination prior to that, I need  
11 a good feel for whether it's an hour, two hours, six  
12 hours. So, I'd ask the parties to talk during the lunch  
13 recess, and we'll address this issue later today.

14 Okay. Anything else we need to address,  
15 before we get back to the panel?

16 (No verbal response)

17 CHAIRMAN GETZ: Okay. Hearing nothing,  
18 then I believe the last set of questions, before we hear  
19 from the Subcommittee, are from Mr. Roth.

20 MR. ROTH: Okay. Thank you.

21 (Whereupon Mark Lyons and Pip Decker  
22 were recalled to the stand, having been  
23 previously sworn.)

24 MARK LYONS, Previously sworn  
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[WITNESS PANEL: Decker|Lyons]

10

1 PIP DECKER, Previously sworn

2 CROSS-EXAMINATION (resumed)

3 BY MR. ROTH:

4 Q. In the Application and in other occasions, it has been  
5 represented that Noble Environmental Power is in the  
6 process of developing I think the figure was  
7 3,700 megawatts of power in various places, and I think  
8 there were eight states mentioned. Is that correct or  
9 do you need a more precise figure?

10 A. (Lyons) I believe that's been revised.

11 Q. 3,850 megawatts.

12 A. (Lyons) Yes. I believe that figure has been revised in  
13 response to data requests.

- 14 Q. Okay. What's the figure of power in development by  
15 Noble now?
- 16 A. (Decker) To my knowledge, we have over 1,250 megawatts  
17 in development at various stages.
- 18 Q. Okay. Now, in the Application and in other places, it  
19 was represented that you have projects in development  
20 in Maine. Is that still the case?
- 21 A. (Decker) That's correct.
- 22 Q. Okay. And, how big a project are you developing in  
23 Maine?
- 24 A. (Decker) We are looking at a, let's see, I believe it's  
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11

[WITNESS PANEL: Decker|Lyons]

- 1 a 40 megawatt project in Maine.
- 2 Q. And, Michigan?
- 3 A. (Decker) We do not have any projects in development in  
4 Michigan to my knowledge.
- 5 Q. Okay. And, was there a project in development that was  
6 canceled?
- 7 A. (Decker) There was a project. There were -- There was  
8 a project in Michigan I believe that we completed.
- 9 Q. Was that Ubl y?
- 10 A. (Decker) Ubl y.
- 11 Q. And, that one was -- what happened to that project?
- 12 A. (Decker) I believe we sold that project to John Deere.
- 13 Q. You sold it to John Deere?
- 14 A. (Decker) Uh-huh.
- 15 Q. Was that your original plan, was to develop it and sell  
16 it?
- 17 A. (Decker) I don't know.
- 18 Q. Okay. And, do you know how much was earned or how much  
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19 it was sold for?  
20 A. (Decker) I was not part of that transaction.  
21 Q. Okay.  
22 A. (Lyons) I do not know.  
23 Q. Okay. And, Minnesota, is there a project in  
24 development in Minnesota?

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[WITNESS PANEL: Decker|Lyons]

1 A. (Decker) Yes.  
2 Q. Okay. And, what's that one called?  
3 A. (Decker) We have I believe two projects in Minnesota;  
4 one is called "Flat Hills 1" and the other is called  
5 "Flat Hills 2".  
6 Q. Okay. And, how big are those?  
7 A. (Decker) 150 megawatts, and then another 100 megawatts.  
8 Q. So, a total of 200?  
9 A. (Decker) And 50.  
10 Q. Okay. And, what stage of development are those in?  
11 A. (Decker) Flat Hill 1 is concurrent to this project, in  
12 terms of its permitting. Flat Hills 2 is just behind  
13 it.  
14 Q. Okay. And, do you have financing arranged for those?  
15 A. (Decker) At this point, I do not believe we do.  
16 Q. Okay. And, do you know how much they're going to cost?  
17 A. (Decker) Not off the top of my head.  
18 Q. Okay. You also indicated that there are projects in  
19 development in New Hampshire. Are there other projects  
20 other than this one under development?  
21 A. (Decker) We currently do not have any other projects in  
22 development in New Hampshire.  
23 Q. Okay. At the time that the Application was made, were

24 there other projects in development in New Hampshire?  
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13

[WITNESS PANEL: Decker|Lyons]

1 A. (Decker) We had a queue position for another project in  
2 New Hampshire.

3 Q. Okay. And, how big a project was that?

4 A. (Decker) 146 megawatts.

5 Q. And, where was that one to be located?

6 A. (Decker) In Coos County.

7 Q. In Coos County? And, was that, if I understand  
8 correctly, was that to be located generally northeast  
9 of the current project?

10 A. (Decker) That's correct, sir.

11 Q. Okay. And, you let the queue position lapse?

12 A. (Decker) Uh-huh.

13 Q. Is that essentially what happened?

14 A. (Decker) Yes. There was a cost for the queue position  
15 of \$150,000. And, we did not make the payment because  
16 of the transmission constraints at a certain date. So,  
17 we decided to remove our queue position.

18 Q. Okay. So, the dropping of the queue position wasn't --  
19 was financial circumstances any consideration in  
20 dropping the queue position?

21 A. We have certain development time lines for actualizing  
22 projects. The transmission issue was difficult for our  
23 management to commit more funds to that project,  
24 individual project.

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[WITNESS PANEL: Decker|Lyons]

1 Q. Okay. Now, as I understand it, Noble is part of the

- 2 committee to evaluate the transmission situation in  
3 Coos County, is that correct?
- 4 A. (Decker) We have been an active proponent and  
5 participant of it. But I'm not sure what committee  
6 you're referencing.
- 7 Q. There was a committee that was, I believe, conducted  
8 here at the Public Utilities Commission, with members  
9 of the Public Utilities Commission --
- 10 A. (Decker) Yes. Yes.
- 11 Q. -- and other interested parties --
- 12 A. (Decker) Yes.
- 13 Q. -- to study the transmission pursuant to a legislative  
14 mandate?
- 15 A. (Decker) That's correct, sir.
- 16 Q. Are you still active in that committee?
- 17 A. (Lyons) If I may, can I answer these questions, because  
18 I was the representative on that committee?
- 19 Q. Certainly.
- 20 A. (Lyons) We are not inactive, per se. But, to my  
21 knowledge, the committee itself is inactive at this  
22 point.
- 23 Q. Okay.
- 24 A. (Lyons) But it would be our intention to participate,

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15

[WITNESS PANEL: Decker|Lyons]

- 1 if and when the committee reactivates.
- 2 Q. Okay. I was told or I understand you have a project in  
3 development in Vermont?
- 4 A. (Decker) We currently do not have a project in  
5 development in Vermont.
- 6 Q. And, at the time of the Application, did you have a

7 project under development in Vermont?  
8 A. (Decker) Yes.  
9 Q. Okay. And, what was that one?  
10 A. (Decker) That was in Rutland, Vermont.  
11 Q. In Rutland. And, how big was that?  
12 A. (Decker) Roughly 60 megawatts.  
13 Q. Fifty?  
14 A. (Decker) Sixty.  
15 Q. Sixty. And, you had an office in Vermont?  
16 A. (Decker) We had an office in Vermont.  
17 Q. And, is that office no longer open?  
18 A. (Decker) It is no longer open.  
19 Q. Okay. And, were there employees in Vermont?  
20 A. (Decker) Yes.  
21 Q. Okay. And, do those employees still work for Noble  
22 Environmental Power?  
23 A. (Decker) There was one employee in Vermont, and he no  
24 longer works for Noble Environmental Power.

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[WITNESS PANEL: Decker|Lyons]

1 Q. Okay. And, has that project been canceled?  
2 A. (Decker) We currently have lease agreements with  
3 landowners in Rutland, Vermont regarding the project.  
4 Q. So, does that mean you -- so, do you still intend to  
5 develop the Rutland Project?  
6 A. (Decker) We no longer have a queue position for the  
7 project.  
8 Q. Okay. So, if your non-answer is as I understand it,  
9 the answer is "you no longer have plans to develop in  
10 Vermont"?  
11 A. (Decker) That's correct, sir.

- 12 Q. Is that correct?
- 13 A. (Decker) Yes.
- 14 Q. Okay.
- 15 A. (Decker) On that project.
- 16 Q. All right. And, I also understand you had a project
- 17 under development in the State of Wyoming, is that
- 18 correct?
- 19 A. (Decker) Yes.
- 20 Q. Okay. I can't find anything about that project. All I
- 21 get is Wyoming County, New York, which crowds the
- 22 internet. But what is your project in the State of
- 23 Wyoming?
- 24 A. (Decker) It's a project in Wyoming, west of Cheyenne.
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[WITNESS PANEL: Decker|Lyons]

- 1 It is approximately 100 -- I believe it's 150,000 acres
- 2 of land currently under lease. We have not applied for
- 3 any permits for that project.
- 4 Q. Okay. And, you had mentioned at the beginning of your
- 5 testimony something about the timeline for developing
- 6 or "actualizing" a project. Where does the West
- 7 Cheyenne Project fall in that?
- 8 A. (Decker) The very early stages.
- 9 Q. Okay.
- 10 A. (Decker) I think we've had a lease for a year and a
- 11 half on that, and the focus on development has been on
- 12 projects such as Granite Reliable, and there are other
- 13 projects behind that.
- 14 Q. Do you expect West Cheyenne to be "actualized", as you
- 15 put it?
- 16 A. (Decker) We would certainly hope so.

- 17 Q. Okay. So, development is continuing on that?
- 18 A. (Decker) That's correct, sir.
- 19 Q. And, how many megawatts is that?
- 20 A. (Decker) I don't know, because the siting of the
- 21 Project has not been complete.
- 22 Q. Okay. And, then, I also saw that there were -- it was
- 23 suggested you had a project under development in North
- 24 Dakota. Is that still out there?

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[WITNESS PANEL: Decker|Lyons]

- 1 A. (Decker) Yes.
- 2 Q. And, is that still under development?
- 3 A. (Decker) Yes.
- 4 Q. And, what was that?
- 5 A. (Decker) What is that project?
- 6 Q. Yes.
- 7 A. (Decker) I believe it is -- I think it's a 126 megawatt
- 8 project.
- 9 Q. Okay. And, what stage of development is that one at?
- 10 A. (Decker) Early stages of development.
- 11 Q. When you say "early", what's been done?
- 12 A. (Decker) We have installed meteorological towers and we
- 13 have completed land rights and secured our transmission
- 14 rights.
- 15 Q. Other than the meteorological, I assume you're
- 16 collecting data from those towers?
- 17 A. (Decker) I believe we are collecting data from those
- 18 towers.
- 19 Q. Okay. Is there anything else happening in North Dakota
- 20 to further the actualization of that project?
- 21 A. (Decker) There's a lot of snow there right now.

22 Q. Uh-huh.

23 A. (Decker) So, to fly out to Fargo is difficult right  
24 now, but we will be going, increasing work I believe in

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19

[WITNESS PANEL: Decker|Lyons]

1 the spring, once we get out there.

2 Q. Okay. Do you think you'll be going out there when  
3 you're done here?

4 A. (Decker) It depends how good a job I do here. It's  
5 cold in Fargo. But there is the potential that I could  
6 work in North Dakota.

7 Q. The people are very nice. I have friends who live in  
8 Grand Forks.

9 A. (Decker) Yes. I'm a hockey player, so I think I'd be  
10 all right.

11 Q. Now, in terms of -- So, in the Application, it said  
12 "3,850 megawatts under development", and now you're  
13 saying there are "1,250 megawatts in development", and  
14 that's quite a difference. Are there projects that  
15 were under development that were part of that 3,850  
16 that are not accounted for in what we just talked  
17 about?

18 A. (Decker) Yes, there are, sir.

19 Q. And, what were they?

20 A. (Decker) We have projects in Texas. We also have  
21 projects in Oklahoma. Those projects, one is I believe  
22 100 megawatts in Texas, next to an existing facility  
23 that we just completed. Then, in Oklahoma, we have  
24 land lease rights that could potentially take our --

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[WITNESS PANEL: Decker|Lyons]

- 1 that take up approximately 1,200 megawatts of  
2 additional wind power capacity out in Oklahoma. I  
3 would just like to say that I don't actively manage  
4 those developments. So, I'm not responsible for, you  
5 know, moving those along. But, to the best of my  
6 knowledge, that's how much power we have in Oklahoma.
- 7 Q. So, if you could count in rough numbers for the  
8 difference between the 3,850 and the 1,200, is some of  
9 the change because of projects that you completed and  
10 went online?
- 11 A. (Decker) Yes.
- 12 Q. How much?
- 13 A. (Decker) Well, Dan Mandli attested that we did bring on  
14 approximately 466 megawatts of power last year.
- 15 Q. So, out of 3,850, so, if we subtract 466, now we're  
16 down to about roughly 3,300?
- 17 A. (Decker) 3,300.
- 18 Q. Okay. So, what accounts for the difference between  
19 3,300 and 1,250?
- 20 A. (Decker) Well, as I said, I was not accounting for the  
21 1,250 number based on, obviously, did not think of  
22 Texas and Oklahoma. If you add those two together,  
23 you're looking at an additional 1,300 megawatts of  
24 power that has been added into the portfolio of numbers

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[WITNESS PANEL: Decker|Lyons]

- 1 that we're discussing.
- 2 Q. So, you would add the 100 in Texas, and what did you  
3 say it was in Oklahoma?
- 4 A. (Decker) Approximately 1,200 megawatts.
- 5 Q. 1,200. So, that brings you up closer to the 3,000

- 6           again?
- 7    A.    (Decker) Approximatel y.
- 8    Q.    So, the 1,250 is not really -- what you testified
- 9           earlier being 1,250, that's not your testimony now?
- 10   A.    (Decker) The "1,250" number was projects that I've been
- 11           fami liarized wi th.
- 12   Q.    Okay.
- 13   A.    (Decker) That have been collecting data. I was just
- 14           trying to think of things in New Engl and and across New
- 15           York.
- 16   Q.    Uh-huh.
- 17   A.    (Decker) I don' t handle the Texas and Okl ahoma issues,
- 18           but I just remembered that we do have active
- 19           development in the south.
- 20   Q.    Now, with respect to the project in Minnesota, the Fl at
- 21           Hills, are you fami liar wi th that project?
- 22   A.    (Decker) Somewhat, yes.
- 23   Q.    Okay. Did you see a news report about it, where it was
- 24           described that a citizen in Minnesota described Noble

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[WITNESS PANEL: Decker|Lyons]

- 1           Environmental Power as "Slimy"?
- 2    A.    (Decker) As "slimy"?
- 3    Q.    "Slimy".
- 4    A.    (Decker) I did not see that article.
- 5    Q.    Would you like to see it?
- 6    A.    (Decker) Sure.
- 7    Q.    Why do you think a citizen would say that about Noble
- 8           Environmental Power?
- 9    A.    (Decker) I can' t specul ate. I know the Development
- 10           Manager, Mi ke Beckner. He' s a Purpl e Heart wi nner. He

11 served two years in Iraq. And, he's the Development  
12 Manager for that project. And, I have the utmost  
13 respect for that gentleman.

14 MR. PATCH: Mr. Chairman, Mr. Decker has  
15 already said he doesn't really know. So, I don't know how  
16 far we're going to get --

17 MR. ROTH: Well, if he really doesn't  
18 want to see it, I don't have to find it. That's fine.  
19 Yes, if you're interested, I can dig it out again.

20 CHAIRMAN GETZ: Well, let's not --

21 MR. ROTH: Okay.

22 CHAIRMAN GETZ: -- get to this level.  
23 You've asked him whether he's seen the article; he said  
24 he's not. You've offered to provide the article. Do you

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23

[WITNESS PANEL: Decker|Lyons]

1 have the article?

2 MR. ROTH: I do somewhere. I had it  
3 yesterday. I can find it again later and introduce it, if  
4 it would be helpful.

5 CHAIRMAN GETZ: Okay. Well, let's move  
6 on then, --

7 MR. ROTH: Okay.

8 CHAIRMAN GETZ: -- if you don't have  
9 access at the moment.

10 MR. ROTH: All right.

11 BY MR. ROTH:

12 Q. Did you have opportunity to review the slides that were  
13 prepared by Mr. Sundstrom?

14 A. (Decker) I reviewed slides prepared by Mr. Sundstrom,  
15 but not in great detail.

- 16 Q. Okay. Do you recall seeing a quote from Noble  
17 Environmental Power's president concerning --  
18 speculating on Noble Environmental Power's future  
19 development plans?
- 20 A. (Decker) I do, but I don't remember exactly the wording  
21 of it.
- 22 Q. Okay. Do you remember the press release? Do you see  
23 the press releases that Noble Environmental Power  
24 makes?

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24

[WITNESS PANEL: Decker|Lyons]

- 1 A. (Decker) Yes, I do.
- 2 Q. Do you recall the press release that the president made  
3 about refusing to speculate about the Company's future  
4 development plans?
- 5 A. (Decker) Yes.
- 6 Q. What did he mean by that, as far as you know?
- 7 A. (Decker) Well, I don't want to speak for my CEO.  
8 You're asking me personally what I think?
- 9 Q. Yes. What do you think?
- 10 A. (Decker) I think it's important, as a company, we look  
11 at the opportunities in the market, for projects that  
12 can be actualized, based on the current market  
13 conditions for electricity, for Renewable Energy  
14 Credits, and how far along certain projects are in  
15 their development pipeline. Projects, such as Granite  
16 Reliable, you know, as Mr. Lowe and Mr. Wood will  
17 testify on Monday, is very far along, we've done a lot  
18 of work. And, this is a very good market in New  
19 England to be developing wind energy for Renewable  
20 Energy Credits and electricity. So, in terms of the

21 future, obviously, the future is somewhat uncertain,  
22 because of electrical markets, as well as various other  
23 things that are outside of our control. But what we  
24 can control is how far along certain projects are in

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25

[WITNESS PANEL: Decker|Lyons]

1 our pipeline and what we would like to actualize as a  
2 company.

3 Q. Do you think that -- Did you think when you read that  
4 or saw that that Mr. Howard -- is that his name,  
5 "Mr. Howard"?

6 A. (Decker) Yes, Walt Howard.

7 Q. That Mr. Howard was suggesting that financial markets  
8 weren't conducive to bringing new projects online?

9 MR. PATCH: Mr. Chairman, I guess I'm  
10 going to object to this. I thought financial issues  
11 were next week, and I think Mr. Lowe and Mr. Wood are in a  
12 better position to address financial issues like that.  
13 And, Mr. Roth -- Mr. Roth, I apologize, is asking Mr.  
14 Decker to speculate about why Mr. Howard made certain  
15 comments. And, I just don't think it's appropriate today  
16 and with this witness.

17 CHAIRMAN GETZ: Well, where are we  
18 headed with this, Mr. Roth?

19 MR. ROTH: The Applicant bears the  
20 burden of establishing that the Company has adequate  
21 managerial and technical capability. I think there's  
22 evidence that there's been a bit of puffery on the part of  
23 the Company in the Application form about its size and  
24 scope of its projects and what it has under development.

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1 And, that subsequent events, as we've seen, including the  
2 things that we've talked about this morning, and including  
3 the statement by Mr. Howard, that suggest that the Company  
4 is not doing as well as has been advertised. And, I'm  
5 trying to get through a project developer some sense of  
6 where the Company is headed with its development. Is this  
7 company shrinking and backing away or is it growing or is  
8 it just, you know, treading water? And, I think that it's  
9 a fair question. It's not really financial capability,  
10 which is a different issue.

11 CHAIRMAN GETZ: Well, I think it's a  
12 fair area of inquiry, as a general matter, what the status  
13 of development is and what the witness's understanding of  
14 the direction of the Company, in relation to recent  
15 developments and statements by the CEO. So, let's proceed  
16 and see where we go.

17 MR. ROTH: Yes. And, I'm actually  
18 almost finished with this. This would be my last question  
19 along these lines. So, I guess I'll ask the question  
20 again. And, I'll probably phrase it differently, because  
21 of the objection, unless we get the reporter to read it  
22 back.

23 BY MR. ROTH:

24 Q. But did you think, when you saw that, that Mr. Howard

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[WITNESS PANEL: Decker|Lyons]

1 was concerned about the future of the Company's ability  
2 to obtain financing for projects, and that's why he was  
3 refusing to speculate about the future development

4 plans?

5 A. (Lyons) May I respond?

6 Q. Sure. You're both -- You're both under oath, I assume.

7 CHAIRMAN GETZ: Well, I think everybody  
8 is being very careful about my admonition in the beginning  
9 of this proceeding about "don't jump in".

10 MR. ROTH: Okay.

11 CHAIRMAN GETZ: So far, I don't believe  
12 Mr. Roth has picked one particular witness. So, until he  
13 does, I think that the panel should feel free to respond.

14 BY THE WITNESS:

15 A. (Lyons) If I may, I'd like to respond to what you  
16 articulated to the Chairman --

17 BY MR. ROTH:

18 Q. I guess I'd like you to respond to the question.

19 A. (Lyons) Okay.

20 Q. Thank you.

21 A. (Lyons) In that case, please repeat the question, so I  
22 can give you an accurate response.

23 Q. Then, I'll repeat the question to Mr. Decker, who was  
24 -- I think I will pick on Mr. Decker for the moment.

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[WITNESS PANEL: Decker|Lyons]

1 See, you didn't really want to answer my question, you  
2 wanted to give a little -- a little dissertation.

3 A. (Lyons) I'd be happy to answer your question.

4 Q. But the question is to Mr. Decker.

5 MR. PATCH: Mr. Chairman, I don't think  
6 it's necessary for Mr. Roth to characterize what Mr. Lyons  
7 is saying or isn't saying. If he's got a question, I  
8 think he should ask it. I don't think he should be

9 characterizing Mr. Lyons' testimony as a "dissertation".

10 MR. ROTH: I asked the question --

11 CHAIRMAN GETZ: Let's hold it for a  
12 moment, gentlemen. I think we're creating too much of a  
13 moving target for the witnesses. I think if Mr. Lyons can  
14 directly answer the question, and then, if he wants to  
15 explain, then he has that opportunity. And, I take the  
16 question as, to the panel, "what their view of their CEO's  
17 statements about refraining from speculating on where the  
18 market will go, where the company will go in the current  
19 market for development of renewable generation, and asking  
20 the personal opinion of the witnesses what that suggests?"  
21 Is that a fair enough paraphrase, Mr. Roth?

22 MR. ROTH: It was -- It was more  
23 specific than that, if I may.

24 BY MR. ROTH:

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[WITNESS PANEL: Decker|Lyons]

1 Q. And, that is, do you believe, whether it's personal or  
2 on a corporate level, and I assume personal, because  
3 you've already indicated you can't speak for the  
4 Company, but do you believe that it indicates a concern  
5 that future development, that financing for future  
6 development is not available or hard to get?

7 A. (Decker) I would say, as a Project Manager, my  
8 responsibility is to get a project finance-ready, and  
9 to make a project that has, you know, all the  
10 components that you need, you need permits, you need  
11 good wind data, you need a great site, you need land  
12 options. And, the goal for development is to bring  
13 projects forward that can be attractive for investment,

14 that is my job. And, we are focused now making  
15 projects as clean as you can get in order to get the  
16 best financing for these projects. That's my  
17 directive.

18 Q. So, you didn't answer the question. The question was,  
19 do you believe that Mr. Howard said that because he was  
20 concerned that future financing for projects was  
21 unavailable?

22 A. (Lyons) I believe that Mr. Howard said that because he  
23 was concerned that the same types of circumstances that  
24 reduce or cause the reduction in the development

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[WITNESS PANEL: Decker|Lyons]

1 pipeline in Noble, which is to say changes in the  
2 financing market, outside of our control, might  
3 continue or that there might be other circumstances  
4 outside of Noble's control that would have bearing on  
5 the financeability of the projects.

6 Q. Okay. Thank you. That's a good answer. I'm not -- I  
7 wasn't trying to attribute that any of these  
8 circumstances were within your control.

9 A. (Lyons) Right.

10 Q. I understand that. But I'm trying to understand the  
11 motivation for the statement, and what you believe was  
12 the motivation. Thank you for your answer. That was  
13 good.

14 A. (Lyons) You're welcome.

15 Q. All right. I'm going to ask a couple of questions that  
16 are going to seem sort of out of order, and I don't  
17 mean "out of order" in a legal sense, but "out of  
18 order" in a logical sense. And, it was mentioned in

19 the Application at some point, and please don't ask me  
20 to find it, but that the power lines from -- for the  
21 project, at least along Dummer Pond Road, were going to  
22 be overhead, and that the power lines on the ridge tops  
23 were generally going to be buried. And, the question I  
24 have is, does that mean that there are some power lines

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[WITNESS PANEL: Decker|Lyons]

1 on the ridgelines that will not be buried?  
2 A. (Decker) There is the potential that some power lines  
3 along the ridgelines will not be buried. But what we  
4 are trying to do is, when the lines begin or when the  
5 increase are heading up the mountain on the new  
6 proposed roads, we will bury all the power lines on the  
7 new roads that we're proposing. So, the 12 miles of  
8 new road that are all found on the ridgelines,  
9 actually, there's really 9 miles on the ridgelines,  
10 we're building three miles further south. Those will  
11 be buried. But the intention is that, as we begin, and  
12 particularly going up above 2,700 feet, all those  
13 cables will be buried. And, the reason is maintenance  
14 issues going forward.  
15 Q. So, in terms of -- let's go site-by-site. You expect  
16 that all the power lines on Dixville Peak will be  
17 buried?  
18 A. (Decker) Yes, sir.  
19 Q. Okay. And, the access road up to Dixville Peak, do you  
20 expect to bury the power lines there?  
21 A. (Decker) Yes, sir.  
22 Q. Okay. And, on Mount Kelsey, do you expect to bury all  
23 the power lines on Mount Kelsey?

24 A. (Decker) Yes, sir.  
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[WITNESS PANEL: Decker|Lyons]

1 Q. And, the access road, I suppose, up to Kelsey/Owl head  
2 at that point, right?

3 A. (Decker) Yes, sir.

4 Q. And, you expect to bury all those lines there?

5 A. (Decker) After we cross that watershed, yes, sir.  
6 There's a watershed, and that's where we begin, yes,  
7 sir.

8 Q. Okay. And, is that watershed about where we stopped  
9 when we went on the tour?

10 A. (Decker) Yes, sir.

11 Q. And, in terms of Owl head, do you also expect to bury  
12 all the power lines on Owl head?

13 A. (Decker) We will be burying all the power lines on  
14 Owl head. And, then, when it goes down the mountain, we  
15 will actually put it on overhead poles 1.5 miles to the  
16 substation.

17 Q. Do you -- I notice you have a bunch of charts there.  
18 Is there one where you could show us a picture of the  
19 project and demonstrate what you mean by that?

20 A. (Decker) Sure. What we're talking about is Fishbrook  
21 ridgeline.

22 MR. PATCH: Could you hold it, Pip, so  
23 the Committee could see it.

24 CHAIRMAN GETZ: Okay. Let's -- I assume  
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[WITNESS PANEL: Decker|Lyons]

1 this is a reproduction, --

2 WITNESS DECKER: Reproduction of the  
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3 map, Figure 3.

4 CHAIRMAN GETZ: Well, one of us at a  
5 time please, from the Application.

6 MR. IACOPI NO: Do you know which Volume?

7 WITNESS DECKER: Volume 1.

8 MR. HARRINGTON: And, it's (c).

9 CHAIRMAN GETZ: So, it looks to me, it's  
10 the map immediately appearing after Page 102. And, if  
11 you're going to point to things, you know, --

12 WITNESS DECKER: Okay.

13 CHAIRMAN GETZ: -- don't just say  
14 "here". So, if you could describe it for Mr. Patnaude to  
15 put in the transcript.

16 MR. IACOPI NO: Mr. Chairman, that's  
17 contained in Petitioner 1.1, that exhibit.

18 BY THE WITNESS:

19 A. (Decker) So, to answer Mr. Roth's question, we're on  
20 Fishbrook ridgeline, it's the most southern turbine of  
21 the Project. What he had asked is, "Can you please  
22 explain the collection line as it goes south to the  
23 substation?" The collection line is found in orange,  
24 it has circular dots, going down to a green circle.

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1 The green circle is known as our substation. The power  
2 lines will be buried along the Fishbrook ridgeline.  
3 What we wanted to do was to shorten the amount of  
4 electrical cable we were going to use for this Project  
5 to collect those electrons to the substation. And,  
6 what we did was, at the most southern turbine of  
7 Fishbrook, the concurs are so steep that it is very

8 difficult to bury the electrical lines there without  
9 really building a new road. So, we are going to be  
10 running those overhead, on overhead poles, at 34.5 kV,  
11 to collect at the substation.

12 BY MR. ROTH:

13 Q. Okay. So, is it fair to say then that the only lines  
14 on the ridges that will be overhead will run from the  
15 southern end of Fishbrook to the substation, through  
16 the back country?

17 A. (Decker) That's correct, sir.

18 Q. Okay. And, in terms of the proximity of an overhead  
19 line on Fishbrook to a wind turbine, what's the closest  
20 proximity of an overhead line to a wind turbine on  
21 Fishbrook?

22 A. (Decker) The closest proximity to an overhead will only  
23 touch this southern turbine. All of these electrical  
24 lines will be buried. The black road, the access road

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[WITNESS PANEL: Decker|Lyons]

1 going up there will actually not have any electrical  
2 cable going down it. So, the nearest electrical cable  
3 to the southern most turbine will be at the foundation  
4 itself, and then go 1.5 miles down to the substation.

5 Q. So, at the foundation of the turbine, there will be an  
6 overhead electrical line?

7 A. (Decker) Well, just south of it, sir.

8 Q. How far?

9 A. (Decker) Approximately -- well, it would be outside the  
10 diameter of the turbine. So, it will be within  
11 500 feet.

12 Q. 500 feet?

- 13 A. (Decker) Yes.
- 14 Q. Not closer?
- 15 A. (Decker) Probably not.
- 16 Q. Okay. Are there any other locations where overhead
- 17 lines will be within that radius or that distance of a
- 18 turbine?
- 19 A. (Decker) No, sir.
- 20 Q. Okay. Are you -- Is there anything that you're going
- 21 to do with that overhead line to account for wildlife?
- 22 A. (Decker) I mean, the clearing associated with a 34.5 kV
- 23 will be approximately 50 feet wide. We're going to let
- 24 that vegetation grow up to 5 feet, shoulder length,

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[WITNESS PANEL: Decker|Lyons]

- 1 minimal clearing for that. So, we're not going to do
- 2 anything other than go and manage from time to time to
- 3 make sure there are no danger trees. But, other than
- 4 that, we're not proposing any restrictions around this
- 5 corridor here (indicating).
- 6 Q. Does the entire collection of the Project run through
- 7 that line or just the Fishbrook?
- 8 A. (Decker) Just the Fishbrook. The reason why we did
- 9 that was because these circuits that are coming down
- 10 from Mount Kelsey, Owlhead, and Dixville, if we were to
- 11 put another circuit on there, it may have forced us to
- 12 put two side-by-side poles. To reduce our impact, we
- 13 thought it was better to just have a 1.5-mile
- 14 "cross-country" run, versus widening the existing road
- 15 and adding an additional 3.4 miles of electrical
- 16 circuit to go north, and then back south.
- 17 Q. Okay. Thank you. Now, yesterday Mr. -- Dr. Publi cover

18 asked a question about kind of a "what if" scenario, in  
19 terms of the decommissioning. And, the question was  
20 something like this, and hopefully he'll forgive me if  
21 I mangle it. "If you had sort of a perfect storm of  
22 events, you have a hurricane and the bankruptcy of  
23 Noble Environmental Power before the decommissioning  
24 fund was funded. What would happen?" And, I think the  
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[WITNESS PANEL: Decker|Lyons]

1 answer from Mr. Lyons was something like "well, maybe  
2 there would be insurance for that." But let's take the  
3 hypothetical a step further and assume that this wasn't  
4 an insurable event. What would happen? How would the  
5 Project get decommissioned under those circumstances?  
6 A. (Lyons) Well, first of all, I'm not sure that the  
7 Project would be decommissioned under those  
8 circumstances. It might well be purchased by another  
9 company and operated, repaired. I suspect it would be,  
10 if it continues to be a windy site, and all the rest of  
11 the infrastructure is in place.  
12 Q. I think the hypothetical was that the hurricane damaged  
13 the turbines.  
14 A. (Lyons) Uh-huh.  
15 Q. And, it was a wreck. And, that's why the insurance you  
16 thought would be useful.  
17 A. (Lyons) Right.  
18 Q. But let's suppose we have a project that cannot be  
19 sold, and the Company is bankrupt. How does it get  
20 decommissioned, if there's no decommissioning fund?  
21 A. (Lyons) Well, excuse me, but, once again, I don't see  
22 that per se as being a "decommissioning event". The

23 decommissioning would occur when the Project ceases to  
24 be useful. Under your hypothetical, there would be

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[WITNESS PANEL: Decker|Lyons]

1 damage to the Project. But, presumably, there would  
2 still be value in the Project. The wind resource would  
3 still be there. The interconnection infrastructure  
4 would still be there. The permits would still be in  
5 place. And, certainly, it would cost money to repair  
6 the Project. But a purchaser of the Project presumably  
7 would factor the need for those additional funds into  
8 the purchase price and buy it at a discount, and pay  
9 the money to repair it. So, I don't know that a  
10 catastrophic event like that would necessarily trigger  
11 decommissioning. Decommissioning -- It might, but --

12 Q. If decommissioning is triggered, and there's no fund  
13 then the Project doesn't get decommissioned, does it?  
14 It's either sold, as you hypothesized, or it just stays  
15 there, right?

16 A. (Lyons) Yes.

17 Q. Yes.

18 A. (Lyons) Well, it would get sold. And, I mean, I take  
19 your point. If it is sold, of course, this is not your  
20 question, but, if it is sold, then the decommissioning  
21 obligation runs with it. But --

22 Q. Okay. Do either of you know whether the Coos County  
23 Commissioners have retained engineers to evaluate the  
24 decommissioning plan?

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[WITNESS PANEL: Decker|Lyons]

- 1 A. (Lyons) Not to our knowledge.
- 2 Q. Have you offered to provide them compensation for  
3 engineering expertise to evaluate the decommissioning  
4 plan?
- 5 A. (Lyons) Yes, we have.
- 6 Q. You did? Okay. And, did they not take you up on that?
- 7 A. (Lyons) To date, no. But I suspect that they will.
- 8 Q. Okay. Yesterday, there was, and I think it was Mr.  
9 Lyons said, something to the effect that "the Project  
10 avoids commercial timber harvesting." Do you remember  
11 making that statement?
- 12 A. (Lyons) Yes, sir.
- 13 Q. In part of a discussion with Ms. Linowes about the  
14 carbon -- the carbon footprint, so to speak, of the  
15 Project?
- 16 A. (Lyons) Yes, sir.
- 17 Q. Isn't it true that, in your Application, you actually  
18 promoted the project as being good to actually  
19 encourage commercial timber harvesting?
- 20 A. (Decker) I will speak to that. In the Application, we  
21 believe that the wind resource is compatible to the  
22 current activities on the Project site. What will be  
23 experienced by the landowners is now, from harvesting  
24 wind, they will receive a payment, just as they receive

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[WITNESS PANEL: Decker|Lyons]

- 1 funds for harvesting wood. To the extent that the  
2 landowners can use that, they can keep these forests in  
3 active commercial production with the resulting income  
4 that they will receive.
- 5 Q. Right.

- 6 A. (Decker) That's absolutely plausible.
- 7 A. (Lyons) I don't know that that means that wind energy  
8 production per se encourages timber harvesting, so much  
9 as it becomes an additional revenue source for timber  
10 harvesting companies to stay in business. But my  
11 remark was based on the fact that we have an agreement  
12 with the Department of Fish & Game and AMC to conserve  
13 substantial tracts of acreage and take them out of  
14 timber harvesting.
- 15 Q. Do you think that your friends at GMO and Bayroot would  
16 be happy to hear you saying that the Project  
17 discourages or avoids commercial timber harvesting?
- 18 A. (Lyons) I don't think they would have a problem with  
19 it, to the extent that they have agreed to cooperate in  
20 it by making this land available for sale. They're  
21 quite aware of this. And, it's within the context of  
22 those specific facts that I made the statement. I  
23 don't think that wind energy or this project per se  
24 discourages timber harvesting.

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[WITNESS PANEL: Decker|Lyons]

- 1 Q. Yes, I will just point out in your Application, on Page  
2 92, you said "The Project is thus compatible with, and  
3 complementary to, the prevailing and planned future  
4 commercial forestry use of this land. In addition,  
5 wind development may help sustain forecast use by  
6 providing another source of revenue to owners, thereby  
7 helping to shore up marginal forestry economics in down  
8 years." I think that's basically what you said, Mr.  
9 Decker, isn't it?
- 10 A. (Decker) That's correct.

11 Q. Okay.  
12 A. (Lyons) And, if I could just point out, that was prior  
13 to our agreement to conserve these parcels.  
14 Q. Now, Mr. Lyons, yesterday you told -- in response to a  
15 question of Mr. Harrington, you said that you were  
16 "glad that you didn't lock in the turbine deal last  
17 fall." I think you were here at the technical session  
18 when Mr. Lowie [sic] said that "the timber" -- that  
19 "the turbine deal hadn't yet been renegotiated and was  
20 hoping to do better." But it seemed to me, from his  
21 statement, that it was possible that it wouldn't occur.  
22 Do you think that the, you know, that, even though the  
23 turbine market may have improved, from the buyer's  
24 perspective, that it's necessarily going to improve for

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[WITNESS PANEL: Decker|Lyons]

1 your purposes?  
2 A. (Lyons) Yes, let me clarify. That we negotiated with  
3 Vestas a Turbine Supply Agreement and a service  
4 agreement, I can't remember the exact name of that  
5 agreement. But we didn't execute them. So, we don't  
6 -- we don't have -- we didn't finish our negotiations.  
7 You know, we had the agreements, the structure of the  
8 agreements developed, and, you know, we were at a point  
9 when we were about to execute, and we did not. So, you  
10 know, those agreements exist in draft form, but they  
11 haven't been signed. So, anything in those agreements  
12 is subject to renegotiation.  
13 Q. And, do you think that Vestas would believe that they  
14 have reached at least an agreement in principle with  
15 you for the purchase of those turbines?

16 A. (Lyons) No.

17 Q. No?

18 A. (Lyons) No. I think it's clear between the parties  
19 that we had not completed negotiations.

20 Q. Okay. There was also reference to a "Final Wind  
21 Report" that needed to be done, prior to submitting a  
22 package for obtaining financing. And, can one of you  
23 or both of you describe what this "Final Wind Report"  
24 is?

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[WITNESS PANEL: Decker|Lyons]

1 A. (Lyons) I believe the reference was to a report from an  
2 independent engineer for a lender to review our wind  
3 data and our wind reports. There was a reference made  
4 yesterday to the fact that the wind energy assessment  
5 is a combination of historical wind data and actual  
6 wind data gathered on-site, and that is then modeled  
7 for a prediction of wind energy availability going  
8 forward in time over the life of the Project. And,  
9 that's done by people smarter than me, with complex  
10 computer models and with known protocols and  
11 techniques. And, then, that is all subject to review  
12 by an independent engineer who works for the lenders  
13 and investors. And, that's the Final Wind Report.

14 Q. Okay. So, the Final Wind Report is prepared by experts  
15 and technicians and the like that the Project will  
16 retain?

17 A. (Lyons) No, that independent engineer is retained by  
18 lenders.

19 Q. Okay. So, the lenders hire consultants who will then  
20 review all of your wind data?

- 21 A. (Lyons) Yes.  
22 Q. Is that how it works?  
23 A. (Lyons) Yes.  
24 Q. Do they go out and gather their own?  
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[WITNESS PANEL: Decker|Lyons]

- 1 A. (Lyons) No.  
2 Q. And, so, they look at all your wind data, the  
3 historical, the modeling, the actual stuff gathered,  
4 and they write -- they make some kind of a report?  
5 A. (Lyons) Yes.  
6 Q. Okay. And, how long does that process take?  
7 A. (Lyons) I believe it takes about six weeks.  
8 Q. Six weeks. And, do you have to pay for that? Does the  
9 Project pay for that process?  
10 A. (Lyons) Yes.  
11 Q. And, how much does that cost?  
12 A. (Lyons) I believe it costs about, yes, between 35 and  
13 \$50,000.  
14 Q. Okay. And, have you prepared such a report at this  
15 point or has one been prepared?  
16 A. (Lyons) Not yet, on this Project.  
17 Q. And, why not?  
18 A. (Lyons) Because we are not on the threshold of  
19 financing.  
20 Q. Okay. And, now, I understand that a meteorological  
21 tower was installed on Mount Kelsey in the recent past.  
22 And, can one of you tell me when that tower was  
23 installed?  
24 A. (Decker) No, we have -- we have a met tower on Owl head  
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[WITNESS PANEL: Decker|Lyons]

- 1 and Fishbrook. The Kelsey -- The two Mount Kelsey met  
2 towers and the Dixville met tower are going up. It has  
3 been too windy for the last six weeks. You need three  
4 downwind days for installation. So, we expect to have  
5 it up in this early March.
- 6 Q. So, Kelsey -- So, the tower on Kelsey has not yet been  
7 constructed?
- 8 A. (Decker) That's correct, sir.
- 9 Q. Okay. And, the tower -- you also mentioned one on  
10 Dixville?
- 11 A. (Decker) We have three towers going up.
- 12 Q. You have three towers going up?
- 13 A. (Decker) Uh-huh.
- 14 Q. So, you have one going up on Dixville?
- 15 A. (Decker) Uh-huh.
- 16 Q. That has still not been constructed?
- 17 A. (Decker) The guy wires, everything is in, the base  
18 plates are in. We are just waiting for downwind days.
- 19 Q. Okay. And, where's the third one?
- 20 A. (Decker) There are two on Mount Kelsey.
- 21 Q. Oh, there is. Okay.
- 22 A. (Decker) One on the north end and one on the south end.
- 23 Q. All right. So, two on Kelsey, one on Dixville, that  
24 are ready to be installed now?

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[WITNESS PANEL: Decker|Lyons]

- 1 A. (Decker) Yes, sir.
- 2 Q. Okay. So, the wind data that you have for the project  
3 does not include any actual wind data at this point  
4 from Dixville Peak or the two locations on Mount

- 5 Kelsey. Is that a true statement?
- 6 A. (Decker) I believe we have some wind data from Dixville  
7 Peak, based on a previous collection study.
- 8 Q. So, that's historical data?
- 9 A. (Decker) Historical, that's right.
- 10 Q. Okay.
- 11 A. (Decker) But, on-site for this project, no.
- 12 Q. Okay. And, how much of that wind data from those  
13 actual towers do you think will be important or  
14 necessary for the wind report for your financing?
- 15 A. (Decker) I don't know, I'm not a meteorologist, in  
16 putting that together. I do know that the more wind  
17 data you can collect, you know, the more comfortable.  
18 I guess, to rephrase that, it's just good to collect  
19 data, to keep doing your homework.
- 20 Q. So, is it fair to say that, to get a good picture of  
21 the wind on Mount Kelsey and Dixville from those  
22 towers, you would want to do it for a year?
- 23 A. (Decker) No.
- 24 Q. No? What if you set it up in May and took it down in  
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[WITNESS PANEL: Decker|Lyons]

- 1 October? Wouldn't you have sort of a skewed view of  
2 the wind?
- 3 A. (Decker) Well, what you would have is, you would have a  
4 reference point for the data that you've been  
5 collecting on Owlhead, Fishbrook, and all the others to  
6 compare it against, to confirm what you've already  
7 done, that has been collected at Fishbrook and Owlhead,  
8 on extrapolated data.
- 9 Q. But only for that season, correct?

- 10 A. (Decker) But you can weigh that against historical  
11 averages of what you've collected.
- 12 Q. Do you think that, if you just took wind data from  
13 those locations from one summer, that would be  
14 sufficient to justify development on those projects?
- 15 A. (Decker) I don't know.
- 16 Q. How come -- Why didn't the Project have met towers up  
17 on Dixville and Kelsey before now?
- 18 A. (Decker) The met towers on Dixville and Kelsey we  
19 recognize is sensitive habitat, unlike Fishbrook, you  
20 can get up there. It's easy access. The reason why it  
21 took us longer to get these meteorological towers up  
22 there is because we cut by hand just under an acre on a  
23 ridgeline. It's very difficult to get to. That  
24 process took approximately three and a half months,

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- 1 coordinating the helicopter lift to get meteorological  
2 towers to Dixville and Mount Kelsey. We're very  
3 sensitive to what's going on up there. And, to  
4 literally have people bring up all of that equipment by  
5 hand was a very long process. But it just speaks to  
6 the fact that we recognize that this is a sensitive  
7 habitat, and we did not want to, you know, do anything  
8 that would undermine it.
- 9 Q. How many wind or how many met towers do you have in the  
10 Project area? And, I guess I would include the Project  
11 area the -- you showed us one that was actually on the  
12 western side, correct?
- 13 A. (Decker) That's correct.
- 14 Q. And, how many met towers do you have, including the

15 western side, in the area that, other than these three  
16 that you're in the process of constructing?

17 A. (Decker) There are five.

18 Q. There are five other ones?

19 A. (Decker) There are three on the Bayroot Parcel and  
20 there are two to the lands north on Dixville.

21 Q. And, when were those towers erected?

22 A. (Decker) I think the tower just north of Dixville was  
23 erected in 1999, and then it was decommissioned for  
24 approximately a year and a half, and then has been

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[WITNESS PANEL: Decker|Lyons]

1 collecting wind data since. It's approximately 1.1  
2 miles north. It's next to the upper terminus of the  
3 Dixville lip at the Balsams.

4 Q. Now, Noble Environmental Power didn't even exist in  
5 1999.

6 A. (Decker) We have a landowner that is very interested in  
7 wind power, and he has been collecting wind data. He  
8 was approached by Plymouth State University to conduct  
9 wind studies, it was kind of a coordinated effort. One  
10 of the sites that was selected was there because of the  
11 wind resources found. So, that historical data has  
12 been very valuable.

13 Q. Is that Mr. Tillotson?

14 A. (Decker) That's correct, sir, the Tillotson  
15 Corporation.

16 Q. Okay. So, that's one of them. The other four, the  
17 other four towers that you mentioned, were those  
18 constructed by Noble Environmental Power or GRP?

19 A. (Decker) There were three meteorological towers

20 constructed by Noble Environmental Power and GRP.

21 Q. Okay. And, when were those towers erected?

22 A. (Decker) The first meteorological tower I believe was  
23 installed in January of 2007.

24 Q. 2007. So, two years ago?

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[WITNESS PANEL: Decker|Lyons]

1 A. (Decker) That's correct, sir.

2 Q. So, if two years you were developing meteorological  
3 towers in other locations in the Project site, why  
4 didn't you do a tower on Dixville and Kelsey then, and  
5 take your time to do it in a way that wasn't disruptive  
6 of the natural habitat?

7 A. (Decker) When the project was first envisioned, we  
8 proposed 67 windmills on the Phillips Brook tract  
9 alone. We did the evaluations of where we thought the  
10 probable wind resources were. We did not have any land  
11 agreements with anyone to the east, which is known as  
12 the "Bayroot Parcel" or the Tillotson Corporation.  
13 Through our on-site surveys and studies, we realized  
14 that we could minimize our impacts and kind of get the  
15 best wind resources if we were to approach additional  
16 landowners to conduct those studies. So, for the  
17 first, I would say, eight months, we've installed  
18 meteorological towers on the Phillips Brook tract.  
19 And, through that time, we've built a lot of trust with  
20 the adjacent landowners that we were very serious about  
21 a wind power project and they liked what we were doing  
22 and they liked that they could be a part of it. So,  
23 that's the reason why there is a two-year -- two years  
24 of development. But that kind of speaks to my -- the

[WITNESS PANEL: Decker|Lyons]

- 1 Application of how we arrived at 33 turbines east of  
2 the Phillips Brook.
- 3 Q. When did you arrive at the idea of doing 33 turbines  
4 east of Phillips Brook?
- 5 A. (Decker) I would say, as Project Manager, I was  
6 advocating for it, based on the breeding bird survey  
7 results and what Stantec was doing out in the field,  
8 where they found there -- you know, when we found out  
9 the data of what was really on the site when we did  
10 some initial wetlands scoping, we realized that we  
11 wanted to minimize our impact and make a great project.
- 12 Q. When did you -- When did that happen? I'm trying to  
13 get the date, not what led you to do it. Was that the  
14 Summer of 2007?
- 15 A. (Decker) It was probably Fall of 2007.
- 16 Q. Fall of 2007?
- 17 A. (Decker) Uh-huh.
- 18 Q. Because, when you visited me in my office in January of  
19 2008, you had already had that I'd idea in mind,  
20 correct?
- 21 A. (Decker) Of 33 wind turbines?
- 22 Q. Thirty-three turbines on the eastern side.
- 23 A. (Decker) Yes.
- 24 Q. Okay.

[WITNESS PANEL: Decker|Lyons]

- 1 A. (Decker) Yes.
- 2 Q. So, why didn't you install the met towers you needed

3 then?  
4 A. (Decker) Well, there's -- one reason is the layout of  
5 meteorological towers, by hand, is very difficult. The  
6 types of towers that we've installed, are going to  
7 install on Kelsey and Dixville are Rhone towers, which  
8 are -- they're a lattice tower, and they have less guy  
9 wires and less associated footprints, to do by hand is  
10 very difficult. So, we were not able to use the  
11 meteorological towers that we already had available to  
12 us on-site, we had to go out and procure ones that were  
13 really site-specific. It's a very coordinated process  
14 that took quite some time.

15 In addition, when we do go up for  
16 meteorological towers, we have to go through the Coos  
17 County Planning Board. The Coos County Planning Board  
18 requires that New Hampshire Fish & Game come and look  
19 at each of the sites. Will Staats is the gentleman  
20 that accompanies us for it. What we have to do is go  
21 through this permitting process in order to get the  
22 site. We changed some of the site layout for these  
23 meteorological towers to associate the new Rhone  
24 towers, and we did not want to get a blessing, even

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1 though we already had the meteorological tower permits  
2 for an older layout, we wanted to go up and make sure  
3 that Mr. Staats and Fish & Game were comfortable with  
4 the exact layout of what we were talking about. So,  
5 the delay was really to make sure that we were not  
6 running ahead of the wishes of the Planning Board or  
7 New Hampshire Fish & Game.

- 8 Q. Did you run into any resistant from the Coos Planning  
9 Board with respect to these tower placements?
- 10 A. (Decker) The Coos Planning Board has an established  
11 protocol for reviewing meteorological towers. They ask  
12 that New Hampshire Fish & Game go for areas that are  
13 above 2,700 feet, to which we complied. That is the  
14 only request that they have.
- 15 Q. The question was, did you run into any --
- 16 A. (Decker) No.
- 17 Q. -- resistance from them?
- 18 A. (Decker) No.
- 19 Q. Okay. Did you run into any resistance from the Fish &  
20 Game Department about permitting those sites?
- 21 A. (Decker) No, sir.
- 22 Q. And, when did you have the permits for -- let's go  
23 back, let's take them one at a time, Dixville, the  
24 Dixville and Kelsey sites for the met towers?

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- 1 A. (Decker) I would have to check my records. I believe  
2 we've had them for almost a year.
- 3 Q. Okay. Something that I wanted to cover that relates  
4 back to the line of questioning I had at the beginning  
5 was -- it had to do with some of the people that used  
6 to be associated with the project that we don't see any  
7 more. What happened to Mr. Brown?
- 8 A. (Decker) Josh Brown left the Company to pursue other  
9 opportunities.
- 10 Q. Okay. And, Mr. Sampson?
- 11 A. (Decker) Same thing, sir.
- 12 Q. Okay. And, now, I see Mr. Lyons is still sitting here,

13 but he no longer works for the Company, is that  
14 correct? You're no longer employed by Noble  
15 Environmental Power?

16 A. (Lyons) I'm not an employee, I'm a consultant.

17 Q. Okay. And, I take it you've gone on to pursue other  
18 opportunities as well, is that --

19 A. (Lyons) I do want to make it clear that I work plenty  
20 hard for the Company.

21 Q. I'm sure you do. Apparently, so do I.

22 A. (Lyons) Yes.

23 Q. Okay. Are there any other people that we have seen in  
24 the past that have gone on to pursue other

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[WITNESS PANEL: Decker|Lyons]

1 opportuni ties?

2 A. (Decker) I would say that Mark Lyons is -- no, sir.  
3 Well, somebody mentioned Chip Reading yesterday,  
4 Charles Reading.

5 Q. Charles Reading, yes. He's also gone on to pursue  
6 other opportuni ties.

7 A. (Decker) Yes.

8 Q. Is the Company somewhat smaller than it was when the  
9 Application was made, in general?

10 A. (Lyons) Yes.

11 A. (Decker) Yes, sir.

12 Q. Okay. By what percentage do you think?

13 A. (Lyons) I don't think we know exactly. I, for a fact,  
14 do not know how many employees there were when the  
15 Application was filed or how many there are now. But I  
16 certainly am aware from responses to the data requests  
17 that there have been -- there has been a reduction in

18 staff at Noble Environmental Power.

19 MR. ROTH: Okay. All right. This is a  
20 point to take a break, because I was going to change  
21 direction in my examination or --

22 CHAIRMAN GETZ: Our intention was to go  
23 to noon and take the lunch recess.

24 MR. ROTH: Okay. That's fine.

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[WITNESS PANEL: Decker|Lyons]

1 BY MR. ROTH:  
2 Q. Now, in the Application, it was said that the project  
3 wanted to "comply with local zoning where practicable",  
4 and it thought that the "project was consistent with  
5 local planning" and the like. Do you remember that?  
6 A. (Decker) Yes, sir.  
7 Q. Did you write that, Mr. Decker?  
8 A. (Decker) I believe I did.  
9 Q. Okay. Now, turning your attention to -- and, are you  
10 familiar with the Coos County Master Plan?  
11 A. (Decker) Which one?  
12 Q. Well, there are two of them in your Application.  
13 A. (Decker) There's the 2006.  
14 Q. That's right. There's 2006 and 2000 -- or, 1989.  
15 A. (Decker) '89, that's correct. Yes.  
16 Q. And, this is sort of a logical question, but why didn't  
17 you have the 2006 Plan in your Application when you  
18 made it in July of 2008?  
19 A. (Decker) That's a great question. That was brought to  
20 my attention after we filed the Application by one of  
21 the members of the Coos Planning Board. They went  
22 through the Application, and we said "I was just not

23 aware of it."

24 Q. So, while you were making your Application in the  
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1 Summer of -- and, in fact, your Application was  
2 probably largely completed by the beginning of 2008,  
3 right?

4 A. (Decker) Uh-huh.

5 Q. And, you missed the most recent Coos Planning document?

6 A. (Decker) The Coos County Planning Board is on record as  
7 supporting the Project. And, they felt it was  
8 compatible. The document that they're referencing I  
9 had never seen. Those documents are not brought to the  
10 Planning Board meetings. I had requested local  
11 Planning Board documents when I was assembling the  
12 Application, and it was just not part of it.

13 Q. Now, in terms of engaging Ms. Vissering to do the  
14 analysis that she did, did you give her the 1989 Plan  
15 or did she have the 2006 Plan?

16 A. (Decker) I believe I gave her the 1989 Plan.

17 Q. Okay. And, what's interesting to me about this is  
18 that, clearly, the 2006 Plan is much better for you,  
19 isn't it?

20 A. (Decker) I won't disagree.

21 Q. In fact, I would also think you wrote it for them.

22 A. (Decker) Well, apparently -- okay. I was not on the  
23 scene when, in 2006, when they published it.

24 Q. And, I'm sure, if you had known about it, I'm sure you  
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1 would have included it in your Application?

- 2 A. (Decker) We like to be humble.
- 3 Q. Yes. Now, in the Master Plan, as you're aware, and I
- 4 think largely in both of them, they're pretty much --
- 5 they're very similar documents, aren't they?
- 6 A. (Decker) Yes, sir.
- 7 Q. Except for one critical difference?
- 8 A. (Decker) The direct reference to supporting wind power?
- 9 Q. Yes.
- 10 A. (Decker) Yes.
- 11 Q. Okay. But, in the "Goals and Policies", they had a
- 12 number of different goals and policies, and they broke
- 13 it out by different areas, correct? Human resources,
- 14 forest resources, recreation, those kinds of things?
- 15 A. (Decker) Uh-huh.
- 16 Q. Let's have a look. Do you want to -- It's in your
- 17 binder, your second, Binder 6, Appendix 52.

18 MR. IACOPI NO: That would be Petitioner

19 2.2.

20 WITNESS DECKER: Which page are you

21 referring to?

22 MR. ROTH: Well, --

23 CHAIRMAN GETZ: Off the record.

24 (Off the record.)

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1 CHAIRMAN GETZ: Okay. Back on the

2 record.

3 BY MR. ROTH:

4 Q. Okay. We'll start with your favorite part and make

5 this easy, all right? On Page 25, in letter "I", it

6 says "Energy Resources". And, number 4, the number 4

7 policy under "Energy Resources" is "Encourage the  
8 development of wind projects and other alternative  
9 energy resources where these can be undertaken in an  
10 environmentally sound manner." That's what it says,  
11 right?

12 A. (Decker) Yes.

13 Q. Okay. Now, going backwards, back on Page 22, the Plan  
14 says, under "Forest Resources", the number 1 policy,  
15 A.1, the number 1 policy here is "Discourage  
16 development that will interfere unreasonably with  
17 continued timber and wood fiber protection." And, now,  
18 I know you've made an argument that the Project is  
19 actually consistent with it, despite Mr. Lyons'  
20 comments yesterday. But do you think that the, you  
21 know, building this Project, locking up all that timber  
22 on top of the ridge, locking up all of the land on the  
23 other side, for the mitigation and for the high  
24 elevation mitigation, do you think that that could

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1 result in, you know, interfering with continued timber  
2 and wood fiber production in Coos County?

3 A. (Lyons) May I respond to that?

4 Q. Sure.

5 A. (Lyons) I think the important word is "unreasonably",  
6 and it's not for us to determine. One would think that  
7 it would be for the County Commissioners to determine  
8 --

9 Q. Absolutely.

10 A. (Lyons) -- what constitutes an "unreasonable  
11 interference with timber and wood fiber production".

12 Our view is that the conservation of the high elevation  
13 parcels that we agreed to do with Fish & Game does not  
14 unreasonably interfere with the timber and wood fiber  
15 production.

16 Q. I know that's your view. But I didn't ask you whether  
17 you thought it was "unreasonable". I just asked you  
18 whether you thought it would interfere with continued  
19 timber and wood fiber production?

20 A. (Lyons) It will -- It would prevent wood fiber  
21 production in the protected areas.

22 Q. Okay.

23 A. (Lyons) By agreement with the companies.

24 Q. Okay. And, so, the protected areas include the stuff  
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1 on the western side, as well as the Project site,  
2 correct?

3 A. (Lyons) Yes, sir.

4 Q. Okay. And, the number 2 priority is "Protect areas  
5 identified as environmentally sensitive".

6 A. (Lyons) Uh-huh.

7 Q. Correct?

8 A. (Lyons) Yes.

9 Q. And, do you think that the Project, being built on  
10 environmentally sensitive areas, actually protects  
11 those areas?

12 A. (Lyons) Yes. With the associated mitigation package,  
13 it does a great job of protecting those areas.

14 Q. But the Project itself is being built on  
15 environmentally sensitive areas, isn't it?

16 A. (Lyons) In part, yes.

17 Q. Okay. Now, number -- letter B, policy number 1,  
18 "Protect remote, undeveloped and other significant  
19 recreation areas". Isn't it true that the Project is  
20 being built in the middle of a remote, undeveloped and  
21 significant recreation area?

22 A. (Lyons) Yes.

23 Q. Okay.

24 A. (Lyons) Yes. I think what we're seeing here, if I

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1 might say, is a number of policy objectives of Coos  
2 County that could potentially be inconsistent. But  
3 they are nonetheless co-equal policy objectives and  
4 require reasonableness and balancing.

5 Q. Well, as you said, that's up to the -- that would be up  
6 to the Coos County Board, except that they can't make  
7 any decision on this anymore, right? It's up to the  
8 SEC at this point.

9 A. (Lyons) Well, I believe that they have unequivocally  
10 stated their support for this Project.

11 Q. But they have also said that they believe that their  
12 view is essentially preempted, or maybe that was your  
13 assertion. You believe that the Coos County Board's  
14 jurisdiction over this is preempted by this Site  
15 Evaluation Committee, don't you?

16 MR. PATCH: Mr. Chairman, I would just  
17 object to that. I think the statute is pretty clear about  
18 the answer to that. I think he's asking for a legal  
19 conclusion.

20 MR. ROTH: Well, maybe Mr. Patch can  
21 tell us then. Is the Coos County Planning Board's

22 jurisdiction over this preempted?

23 MR. PATCH: That may be the case. But  
24 the statute also provides that the views of regional  
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1 bodies will be taken into account by the Committee.

2 MR. ROTH: Okay.

3 BY MR. ROTH:

4 Q. So, in letter D, one of their policies is to "Support  
5 land use activities that protect habitats, including...  
6 bird nesting sites, ecosystems, food sources and other  
7 life requisites for wildlife species". Now, isn't it  
8 true that you're building the Project on areas that are  
9 bird nesting sites, habitats, ecosystems, and provide  
10 other life requisites for wildlife species?

11 A. (Lyons) Yes.

12 Q. Okay.

13 A. (Lyons) But, again, with the mitigation plan that we've  
14 agreed to, it does a good job of protecting all of  
15 these habitats.

16 Q. Right. But, if not for the Project, certain areas,  
17 certain bird nesting sites, food sources, and other  
18 life requisites for wildlife species would not be  
19 disrupted, would they? The Project is doing that,  
20 correct?

21 A. (Lyons) In part.

22 Q. Okay.

23 A. (Lyons) But it's our position that we're doing it in a  
24 not unreasonable manner, and, once again, --

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1 Q. That's the conclusion for the Board, for the Committee,  
2 not for --

3 CHAIRMAN GETZ: Well, Mr. Roth, let him  
4 answer the question, and then you can move onto your next  
5 question.

6 BY THE WITNESS:

7 A. (Lyons) Well, I think it's important to point out that  
8 this is was a subject of intense discussion with some  
9 of the parties in this proceeding, including Fish &  
10 Game and AMC. And, it was for this purpose that we  
11 entered into a mitigation agreement, to counterbalance  
12 and mitigate for our activities in such a way that the  
13 net impact for these habitats in that area is  
14 beneficial. If it were not for the Project, these  
15 habitats may well be continued to be subject to timber  
16 harvesting.

17 And, again, you know, there are three  
18 policy goals that are, as you had pointed out in this  
19 document, that -- that need to be balanced: Wind  
20 energy production, preservation of land, and continued  
21 timber harvesting, and to do so in a manner that's  
22 beneficial, in total, for the County.

23 BY MR. ROTH:

24 Q. That will make a fine closing argument when we make the  
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[WITNESS PANEL: Decker|Lyons]

1 closing arguments. But I'm just asking you questions  
2 about this particular document, and the assertion that  
3 was made in your Application that it's consistent with  
4 the Coos County planning document.

- 5 A. (Lyons) Yes.
- 6 Q. And, now, I appreciate that you have, you know, a great  
7 closing argument, and I'm sure we'll hear it again, but  
8 I want to get back to the document. And, I look now at  
9 letter F. It says the goal is to "Conserve soil and  
10 geologic resources", "protecting... significant  
11 geological formations, and allowing environmentally  
12 responsible utilization of those resources", and  
13 "protect areas identified as important natural  
14 geological formations". Now, I suppose we can argue  
15 about whether these ridges are "important natural  
16 geological formations", but these are natural  
17 geological formations, aren't they, the ridges that  
18 you're building those turbines on?
- 19 A. (Lyons) Yes.
- 20 Q. And, you're going to alter them with this Project,  
21 aren't you?
- 22 A. (Lyons) In pursuit of another one of the County's  
23 goals, yes.
- 24 Q. Okay. And, in letter H --

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[WITNESS PANEL: Decker|Lyons]

1 CHAIRMAN GETZ: Well, Mr. Roth, I think  
2 this line of reasoning and inquiry is becoming cumulative.  
3 I think we're going to keep getting the same answer from  
4 the witness. Is there a particular need to go through  
5 each of these issues with respect to the overall issue of  
6 the compliance with the Master Plan?

7 MR. ROTH: Well, I have a couple more.  
8 And, I can summarize them into one question. But I think  
9 it's a fair avenue for cross-examining, where they made

10 the representation that "this is consistent with the Coos  
11 County planning".

12 CHAIRMAN GETZ: I agree that it's a fair  
13 line of inquiry, but it's becoming cumulative. If you  
14 could combine it, I expect we're going to get the same  
15 answer we've heard several times from the witness.

16 MR. ROTH: Okay.

17 BY MR. ROTH:

18 Q. And, I'll refer to letter H, on Page 25, with respect  
19 to protecting natural aesthetic values; letter K, where  
20 it says the policy is to protect -- "support protection  
21 of unique, rare, endangered, threatened, ... critical  
22 natural, ... to preserve their ecological, scientific",  
23 etcetera, "values". And, then, this one I thought,  
24 under "Development", on Page 27, was particularly

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1 interesting, "Discourage the construction of major new  
2 public access ways which would result in a loss of  
3 significant back country values and the natural  
4 character of remote areas". And, isn't it true that  
5 the Project, despite all the things you say about it  
6 that are going to be positive, that the Project is  
7 going to be in conflict with some of those values  
8 expressed in the Coos County Planning Board document?

9 A. (Lyons) I think it would be helpful for us to clarify  
10 that we -- it is our position that this Project is  
11 consistent with the Plan as a whole, and helps to  
12 achieve a number of goals of the Plan. And, in our  
13 view, is not inconsistent with this Paragraph number 6  
14 that you pointed out.

15 Q. So, developing 12 miles of new road into previously un  
16 -- areas that never had a road before isn't in contrast  
17 with that particular goal?

18 A. (Lyons) Well, first of all, these are not public access  
19 ways.

20 Q. Okay. So, I assume from that that you are not going to  
21 allow the public access to these ridgelines?

22 A. (Lyons) Public access will continue on existing roads  
23 as it exists today. Public access will not be allowed  
24 to new roads that are being constructed for access to

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1 the turbine strings.

2 Q. Okay. My question --

3 A. (Lyons) Those will be gated --

4 Q. I'm sorry.

5 A. (Lyons) Those will be gated and public access  
6 restricted.

7 Q. So, the question was asked yesterday about  
8 "snowmobiles", and I would add "all-terrain vehicles"  
9 to that. Now, in terms of getting around the gates and  
10 back on the road, isn't that quite easy?

11 A. (Lyons) I don't know how easy that is. But -- And, I  
12 can't answer or speculate about people who choose to  
13 violate access restrictions. But we will put gates  
14 there, and we will post signs to -- that notify people  
15 that access is restricted.

16 Q. And, isn't it true that you're going to be expanding  
17 and improving the Dummer Pond Road and the other  
18 existing roads into the Project area?

19 A. (Lyons) Yes.

20 Q. And, you know, you've heard the expression "if you  
21 build it, they will come." Do you expect that the  
22 improvements on those roads are going to encourage  
23 additional motor vehicle traffic in that area?

24 A. (Lyons) I don't know whether they will or not. I know  
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1 that -- I know that the Town of Dummer specifically  
2 requested that we not restrict existing public access,  
3 that that was a concern of theirs. And, we have agreed  
4 that we will not restrict the current public access.  
5 They see that as beneficial to their citizens.

6 Q. And, isn't it true that people who know that there's a  
7 windfarm being developed or that has been developed are  
8 going to drive up there in probably great numbers to  
9 get a good look at it, aren't they?

10 A. (Lyons) I don't know. That may or may not happen. I  
11 would like to point out that, in Paragraph 6, the  
12 existence of -- it is qualified by saying "major new  
13 public access ways", I'm not sure that our improvement  
14 of Dummer Pond Road constitutes a "major new public  
15 access way". But I also don't believe there's any  
16 evidence that it would "result in the loss of  
17 significant back country values and the natural  
18 character of remote areas" or "concentrate development  
19 in areas served by existing state highway systems".  
20 So, it's for all of those reasons that I don't think we  
21 would violate the Paragraph Number 6.

22 A. (Decker) To clarify, Dummer Pond Road is a private  
23 road, owned by the landowners.

24 Q. Now, turning your attention to your exhibits in Volume

[WITNESS PANEL: Decker|Lyons]

1 2 of the Application, Exhibit Number 5b.

2 CHAIRMAN GETZ: Mr. Roth, you said 5b,  
3 correct?

4 MR. ROTH: Five (b). It's Binder Number  
5 2.

6 CHAIRMAN GETZ: And, it appears to be a  
7 map of Millsfield and Ervings Location, is that what  
8 you're referencing?

9 MR. ROTH: That's correct.

10 MR. IACOPI NO: That would be Petitioner  
11 1.2.

12 BY MR. ROTH:

13 Q. Now, this map is -- Mr. Decker, can you tell me what  
14 this map is?

15 A. (Decker) This is a land use map for the unincorporated  
16 place of Millsfield and Ervings Location.

17 Q. And, is it, as it says up there, "intended for zoning  
18 purposes only"?

19 A. (Decker) That does, that is correct. I would also say  
20 that, because they're unincorporated places, they are  
21 not -- there is no zoning that I'm aware of in these  
22 unincorporated places.

23 Q. Okay. If you noticed in the illustration on that page,  
24 there's a hatched-in area, kind of ameba-shaped, in the

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1 upper left-hand corner there?

2 A. (Decker) Yes.

3 Q. Can you identify what that is?

- 4 A. (Decker) The ameba shape is most likely representing  
5 Mount Kelsey and some portion of Owl head Mountain.  
6 Q. Okay. And, what does the legend say about that area?  
7 A. (Decker) The hatches are going the other way, but it  
8 looks --  
9 Q. Is that a PD6 area?  
10 A. (Decker) That is correct, sir.  
11 Q. "Steep slopes and high elevation"?  
12 A. (Decker) Yes.  
13 Q. Okay. And, that's where you -- And, that's part of  
14 your Project area, isn't it?  
15 A. (Decker) Yes.  
16 Q. Okay. And, turning to the next map, on Exhibit 5c or  
17 Appendix 5c. Is this another Coos County land use map?  
18 A. (Decker) This is another Coos County land use map, yes.  
19 Q. Okay. And, down in the lower left-hand corner, there's  
20 another sort of amorphous shape with cross-hatching in  
21 it, correct?  
22 A. (Decker) Yes, sir.  
23 Q. And, can you tell us what that is?  
24 A. (Decker) That would represent the area that makes up  
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- 1 Dixville Mountain.  
2 Q. Okay. And, is that one of your Project areas?  
3 A. (Decker) Yes, sir.  
4 Q. Okay. And, is that also designated as "PD6"?  
5 A. (Decker) That is also designated a "PD6".  
6 Q. Okay. And, what is "PD6"?  
7 A. (Decker) It says "Steep slopes and high elevations".  
8 Q. Okay. Now, turning further in your binder to Appendix

- 9           5e, are you familiar with this document?
- 10 A.       (Decker) The "Zoning Ordinances Guide" for the  
11           unincorporated places, I am.
- 12 Q.       Okay. Is this the most recent one, as far as you know?
- 13 A.       (Decker) As far as I know. I'm not in the habit of  
14           writing these.
- 15 Q.       Okay. Now, turning to Page 23 of that document, at the  
16           bottom there, it's "4.03F Steep Slopes and High  
17           Elevation (PD6)", correct?
- 18 A.       (Decker) Uh-huh.
- 19 Q.       Is this the ordinance that explains what those  
20           cross-hatch areas are about?
- 21 A.       (Decker) That is my understanding, yes.
- 22 Q.       Okay. And, what is your understanding about what this  
23           -- how this rule would work?
- 24 A.       (Decker) If there were zoning?

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- 1 Q.       If there were zoning.
- 2 A.       (Decker) That you would have to apply for a permit to  
3           build.
- 4 Q.       Okay. And, so, is it your position that,  
5           notwithstanding this document entitled "Zoning  
6           Ordinances", that this is essentially meaningless?
- 7 A.       (Decker) No.
- 8 Q.       Okay. What is the purpose of it then, if it's not  
9           zoning? If they call it "zoning"? I'm a little  
10          confused.
- 11 A.       (Decker) You would have to apply for a building permit  
12          to construct a meteorological tower, which we have  
13          done.

14 Q. Okay.

15 A. (Decker) You would have to apply for a permit to build  
16 in this area.

17 Q. Okay. So, you -- it's your understanding then that, to  
18 build a meteorological tower, you would have to comply  
19 with this rule, in particular, would that fall under  
20 4.03F(3)(b), "Uses Requiring a Permit"?

21 A. (Decker) Yes, you would -- Yes.

22 MR. PATCH: I think you're asking again  
23 for a legal conclusion, and I am not sure what the cite is  
24 to. Is the cite to -- I don't have that document in front  
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1 of me, but is this something that's in the Application or  
2 is this something else that you're citing to, Mr. Roth?

3 MR. ROTH: Oh, it's in the Application.  
4 We've already established that it is Appendix 5e to the  
5 Application.

6 MR. PATCH: No, but the cite that you  
7 just asked Mr. Decker about, I guess I'm not clear.

8 MR. ROTH: It's Page 23 and 24 of that  
9 document.

10 CHAIRMAN GETZ: Well, the witness is not  
11 an attorney, so we're not going to expect him to provide a  
12 legal conclusion. But I think it's fair to inquire, based  
13 on his experience in working in development of this  
14 Project, and he acknowledges familiarity with this  
15 document, to explain what his understanding is and what  
16 steps he may have taken on behalf of the Company with  
17 respect to these documents.

18 BY THE WITNESS:

19 A. (Decker) The Coos County Planning Board issues permits  
20 for, on a very rare basis, because there is not a lot  
21 of development in the unincorporated places. We would  
22 go -- We go to the Planning Board, we issue and intend  
23 to submit a permit for a meteorological tower. And,  
24 they, you know, ask you to fill out a form. On that

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1 form it describes what your intentions are, and, you  
2 know, to comply with that. For areas in PD6 or high  
3 elevation areas, New Hampshire Fish & Game joins myself  
4 or a representative to visit one of these  
5 meteorological towers, and then the Planning Board  
6 would take that recommendation or take that analysis or  
7 letter from Fish & Game, as well as, then they go vote  
8 on whether or not to grant the meteorological tower  
9 permits.

10 BY MR. ROTH:

11 Q. Okay. Now, going back to Page 23, the first paragraph  
12 there of 4.03F?

13 A. (Decker) Uh-huh.

14 Q. Could you read that, number 1.

15 A. (Decker) "The purpose of a PD6 is to regulate certain  
16 land use activities in mountain areas in order to  
17 preserve the natural equilibrium of vegetation,  
18 geology, slope, soil and climate in order to reduce  
19 danger to public health and safety posed by unstable  
20 mountain areas, to protect water quality, and to  
21 preserve mountain areas for their scenic values and  
22 recreational opportunities."

23 Q. Okay. Now, if -- But for this process here, would you  
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24 expect that the Project would be looking for a Coos  
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1 County permit to construct the wind turbines as well?

2 A. (Decker) It's my understanding that we are not looking  
3 for a permit to construct wind turbines.

4 Q. I understand, because you have this process, correct?

5 A. (Decker) That's correct, sir.

6 Q. Okay. But, if you did not have this process, would you  
7 be up in Coos asking for permits under this particular  
8 provision?

9 MR. PATCH: Mr. Chairman, I think,  
10 again, we're getting into preemption issues and legal  
11 arguments. And, I guess I can give his understanding.  
12 But it seems like Mr. --

13 CHAIRMAN GETZ: It's similar to my  
14 earlier ruling, again, it's not calling for a legal  
15 conclusion, but just explaining his understanding of the  
16 operation of the Zoning Ordinances, in league with the  
17 jurisdiction of this Site Evaluation Committee. But,  
18 again, it's his opinion or his understanding of what the  
19 status of the affairs are.

20 BY THE WITNESS:

21 A. (Decker) Yes, I would go to the Coos County Planning  
22 Board.

23 BY MR. ROTH:

24 Q. Okay. Thank you.

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1 A. (Decker) You're welcome.

2 Q. Now, in Appendix 5f, there's a document attached there,  
3 the "Town of Dummer Master Plan 2000". Are you  
4 familiar with this document?

5 A. (Decker) Yes, sir.

6 Q. All right. Now, this one is -- and, this is the Town  
7 of Dummer Master Plan, right?

8 A. (Decker) Yes, that's correct.

9 Q. And, is it your position, and I suppose this is -- I  
10 think this is in your Application, that your Project is  
11 consistent with the Town of Dummer Master Plan?

12 A. (Decker) Yes.

13 Q. Okay. And, I would note, and I'm not going to belabor  
14 this, and I'll just note it for purposes of the  
15 Committee and not engage in a lengthy review of this  
16 with you, but the Master Plan describes that "Dummer  
17 residents want to maintain a rural atmosphere in town  
18 and a lifestyle associated with low-population  
19 density." Is that correct? Page 42.

20 A. (Decker) Yes, sir.

21 Q. And, I think one of the things that is most interesting  
22 is on Page 44, where they indicate factors to  
23 discourage. And, can you read, on Page 44, Factor to  
24 Discourage Number 3?

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1 A. (Decker) "Large buildings which could not be safely  
2 protected by the Milan Volunteer Fire Department."

3 Q. Okay. Now, we can argue about whether a 400-foot wind  
4 tower is a building. But do you think that the Milan  
5 Volunteer Fire Department could safely protect any of  
6 your towers?

- 7 A. (Decker) We're talking about the Town of Dummer Master  
8 Plan, there are not turbines being proposed in the Town  
9 of Dummer.
- 10 Q. Okay. So, do you think -- So, is it your view then  
11 that the Milan Volunteer Fire Department would never  
12 respond to a fire on any of your locations?
- 13 A. (Decker) I guess -- I think the Milan Volunteer Fire  
14 Department should make their own decision, and not --  
15 you know, with respect to these wind turbines, even  
16 though this is found in a Dummer Master Plan, it would  
17 be up to the decision-makers of Milan and the Fire  
18 Department if they could do it or not.
- 19 Q. Okay. So, if they decided "Nah, we're not going to go  
20 up there", that would be okay with you?
- 21 A. (Lyons) I just want to clarify. Your original question  
22 I believe was "are we in violation of this provision of  
23 the Dummer Master Plan?" The answer is "no", because  
24 we don't have any wind towers there. Now, is the

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- 1 question whether "if there were a fire at one of the  
2 towers, would the Milan Fire Department respond?"
- 3 Q. My question was -- And, he said "they would make up  
4 their own mind." And, so, I said, "Well, okay, if they  
5 make up their own mind and don't come, is that all  
6 right?"
- 7 A. (Decker) Well, safety and fire are an issue. We  
8 brought it up with the Town of Dummer. We were  
9 referred by the Selectmen to the Mile Fire Department  
10 to support our efforts. I was given no indication by  
11 the Town of Dummer that Milan Fire Department would not

- 12 be supportive of this project.
- 13 Q. Well, that's a different question. Would they respond
- 14 to a fire on your property?
- 15 A. (Decker) It's possible.
- 16 Q. Would you expect them to?
- 17 A. (Decker) We would certainly -- yes.
- 18 Q. And, do you think that they could safety protect any of
- 19 those wind turbines?
- 20 A. (Lyons) May I? I don't think our concern would be so
- 21 much with their protecting the wind turbine, so much as
- 22 limiting damage from a fire in a wind turbine. You
- 23 know, so, we would be concerned that they would protect
- 24 the surrounding area and any people, not the turbine

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- 1 itself.
- 2 Q. Okay. But the "factor to discourage" is "large
- 3 buildings which could not be safely protected by the
- 4 Milan Volunteer Fire Department." And, I think I've
- 5 made the point and I'm not going to push it any
- 6 further.
- 7 Now, I'm turning to the next document in
- 8 this binder, 5g, which is the "Town of Dummer Zoning
- 9 Ordinance". And, I call your attention to Article IV
- 10 on Page 5 and 6. As far as you know, is there anything
- 11 in the Town of Dummer Zoning Ordinance which permits or
- 12 would permit, if you had to get a permit from them, the
- 13 construction of your facility? Is it a "Bed &
- 14 Breakfast accommodation"?
- 15 A. (Lyons) No.
- 16 Q. A "campground"?

- 17 A. (Lyons) So, to be clear, the facilities that we're  
18 proposing to construct in the Town of Dummer are a  
19 substation, a switchyard, and an overhead collection  
20 line.  
21 Q. Okay. Is the area in which you're doing this project  
22 zoned commercial / industrial?  
23 A. (Decker) No.  
24 Q. So, is the area within the Town of Dummer, where you're  
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[WITNESS PANEL: Decker|Lyons]

- 1 building the switchyard and substation, zoned  
2 commercial / industrial?  
3 A. (Decker) I don't believe it is.  
4 Q. Okay.  
5 A. (Lyons) May I add that this has been a topic of  
6 discussion with the Town of Dummer, and they understand  
7 that this project would not be -- would not be  
8 permissible under their Zoning Ordinance as drafted.  
9 But that they have requested that, if we make any  
10 modifications beyond our certificated Project, that we  
11 would seek a zoning permit, and that they would work in  
12 good faith with us to amend their Zoning Ordinance to  
13 allow for such modifications. And, that is the subject  
14 of our proposed conditions to the Certificate.  
15 Q. Okay.  
16 MR. PATCH: And, Mr. Chairman, just to  
17 be clear where that is in the record, that's Appendix 47,  
18 contained in Volume 6, which has been marked as Petitioner  
19 2-2.  
20 BY MR. ROTH:  
21 Q. But, at moment, you would agree that there's nothing in

22 the Dummer Zoning Ordinances that would allow you to  
23 construct a substation and a switchyard at this time?  
24 A. (Lyons) I believe that's the case.

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1 Q. Okay. Now, turning to your Volume 3, --

2 MR. IACOPI NO: And, Volume 3 has been  
3 marked "Petitioner 1.3".

4 BY MR. ROTH:

5 Q. Looking at Appendix Number 31, the "New Hampshire  
6 Energy Plan". Now, it's a little unclear to me why you  
7 have all these documents in here, but maybe you can,  
8 you know, in like 50 words or less, tell me why you  
9 have the "New Hampshire Energy Plan" and "The New  
10 Hampshire Clean Power Strategy", and the series of  
11 Environmental Fact Sheets, and Web pages, and "The  
12 Climate Change Challenge". What was the purpose of  
13 including these documents in your Application?

14 A. (Decker) I think the purpose of it was to reference  
15 information that was found in the Application itself to  
16 support where certain statements that we made came  
17 from.

18 Q. Like what?

19 A. (Decker) That wind energy is being encouraged in the  
20 State of New Hampshire.

21 Q. Okay. All right. Let's take that for its -- on its  
22 face value. Let's turn to the New Hampshire Energy  
23 Plan. Now, I note that you include only Chapter 1 of  
24 the New Hampshire Energy Plan, is that correct?

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- 1 A. (Decker) That is correct.
- 2 Q. In fact, isn't this a much larger document, with, I  
3 don't know, ten chapters in it?
- 4 A. (Decker) Yes, sir.
- 5 Q. Okay. Now, is there anything in the New Hampshire  
6 Energy Plan, the first chapter here, that identifies  
7 wind as something to be encouraged?
- 8 A. (Decker) I mean, simply that the purchase of renewable  
9 power -- renewable power has to be created, if New  
10 Hampshire should consider purchasing a percentage of  
11 its power from renewable generation, --
- 12 Q. Okay.
- 13 A. (Decker) -- that seems like an indication to create  
14 renewable energy.
- 15 Q. Okay. Aren't there ways to purchase renewable power  
16 without creating any?
- 17 A. (Decker) You can purchase renewable energy without  
18 creating any, yes.
- 19 Q. Okay. And, in fact, doesn't the Plan here actually  
20 recommend certain action steps about it, that are  
21 spelled out on Pages 13, 14, 18, you know, all the way  
22 through to Page 22? And, do any of those  
23 recommendations of the New Hampshire Energy Plan say  
24 "go out and build industrial wind power plants in New

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- 1 Hampshire"?
- 2 A. (Decker) I think the thing that we were really focused  
3 on was found on "Fuel Diversity in New Hampshire" on  
4 Page 11.
- 5 Q. Okay.

- 6 A. (Decker) Where, you know, they talk about --
- 7 Q. But, before you get there, can you answer the question?
- 8 Did any of the recommendations of Chapter 1 say "go out
- 9 and build commercial / industrial wind power plants"?
- 10 A. (Decker) The implication is that, if these strategies
- 11 are implemented --
- 12 Q. Is that the --

13 CHAIRMAN GETZ: Well, let's answer the

14 question directly. You'll have an opportunity to explain.

15 BY THE WITNESS:

16 A. (Decker) No.

17 BY MR. ROTH:

18 Q. Okay. Now, you refer to Page 11, where they talk about

19 the "Fuel Diversity in New Hampshire". Do you see the

20 last paragraph there, at the bottom of the page?

21 A. (Decker) Yes.

22 Q. What is the next to last sentence there say, which

23 begins with "However"?

24 A. (Decker) "Renewable power often has difficulty

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- 1 competing directly in a competitive market, and the
- 2 cost of public policies designed to support renewable
- 3 power need to be carefully weighed against these
- 4 benefits."
- 5 Q. Okay. Does that sound like a call to go out and build
- 6 industrial wind power plants around New Hampshire?
- 7 A. (Decker) That specific sentence does not sound like a
- 8 call to me.
- 9 Q. Okay. Now, I think, if I'm right about this, the next
- 10 sentence says "More details...in the state can be found

- 11 in Chapter 8." Now, I don't find Chapter 8 in your  
12 document. Are you familiar with Chapter 8?  
13 A. (Decker) Chapter 8 was not included in this  
14 Application.  
15 Q. Okay. Are you familiar with it? Did you read Chapter  
16 8?  
17 A. (Decker) I have not read Chapter 8.  
18 Q. Okay. Mr. Lyons, did you read Chapter 8?  
19 A. (Lyons) No.  
20 Q. Okay.  
21 A. (Lyons) I may have at one point, but I don't recall.  
22 Q. Would you be surprised to learn from Chapter 8 that  
23 what they did with Chapter 8 is they did a study. They  
24 compared the base situation, which is basically nothing

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- 1 changes except more of the same, with development of  
2 75 megawatts of wind energy over 25, 20 something  
3 years, up through the year 2020. And, would you be  
4 surprised to learn that they predict that, by doing  
5 that, you would actually have a reduction in employment  
6 in the energy sector, because, in fact, what happens is  
7 the prevalence of wind discourages the development of  
8 traditional power plants? Would that surprise you to  
9 learn that?  
10 A. (Lyons) It would not surprise me to read that in  
11 Chapter 8.  
12 Q. Okay. And, would it surprise you to learn that, based  
13 -- that the development of 75 megawatts of wind would  
14 have less than a 1 percent improvement on the carbon  
15 di oxide emissions in New Hampshire?

- 16 A. (Lyons) Once again, I couldn't speak for it personally,  
17 but it wouldn't surprise me to read that in Chapter 8.  
18 Q. Okay. I'm going to -- I'll give this to one of you.  
19 And, this is Chapter 8. And, I don't care which one of  
20 you takes it on, whichever one of you can read the  
21 best, I suppose. And, this is part -- and, I'll  
22 introduce this once it's read in. But, Chapter 8, on  
23 Page 8-22, there is a highlighted portion there. Would  
24 you mind reading that for the record please.

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- 1 A. (Lyons) The whole paragraph you would like me to read?  
2 Q. Yes, the highlighted portion there.  
3 MR. IACOPI NO: What page of Chapter 8 is  
4 that?  
5 WITNESS LYONS: It's Page 8-22.  
6 MR. IACOPI NO: Thank you.  
7 BY THE WITNESS:  
8 A. (Lyons) "While the establishment of wind farms in New  
9 Hampshire offers potential economic and environmental  
10 benefits for the state, there are a number of issues  
11 that will need to be addressed. A starting point is to  
12 continue to refine our understanding of what parts of  
13 the state, based upon prevailing winds, elevation,  
14 aspect, ownership, distance to transmission lines, and  
15 other relevant factors included in a recent Northeast  
16 Utilities/ECS Study, offer the greatest promise for  
17 wind power. With this information, the State, wind  
18 investors, environmental organizations, landowners and  
19 municipalities can engage in constructive dialogue  
20 about what sites are most appropriate for potential

21 wind farms. By engaging in this discussion, all  
22 parties would have an opportunity to address issues of  
23 concern, and potential wind projects could be focused  
24 on the most appropriate sites."

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[WITNESS PANEL: Decker|Lyons]

1 BY MR. ROTH:

2 Q. Okay. Thank you. Now, Mr. Lyons, you're an attorney.  
3 Do you think an adjudicated proceeding on a fast-track  
4 is a good place to have an opportunity to address  
5 issues of concern and to work out complicated issues  
6 like this?

7 A. (Lyons) I don't know that it substitutes for that  
8 process. But I also don't believe that it -- I believe  
9 that it is an adequate proceeding for the consideration  
10 of the impacts and benefits of our proposed Project  
11 under the SEC rules.

12 Q. Uh-huh.

13 A. (Lyons) And, I don't -- I haven't read anything that  
14 says that this process cannot proceed effectively in  
15 the absence of the proposed process that I just read  
16 about.

17 Q. As far as either of you know, has there been any  
18 comprehensive public process to go about refining our  
19 understanding of what parts of the state, based on  
20 "winds, elevation, aspect, ownership, distance to  
21 transmission, other relevant factors" ought to be  
22 considered? Has that happened anywhere outside of this  
23 room?

24 A. (Lyons) To my knowledge, that hasn't happened within

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[WITNESS PANEL: Decker|Lyons]

- 1 the State of New Hampshire.
- 2 Q. Okay. All right. And, Mr. Decker, as I understand,
- 3 you have a degree in Public Policy or something like
- 4 that?
- 5 A. (Decker) Yes, sir.
- 6 Q. Right?
- 7 A. (Decker) Uh-huh.
- 8 Q. Do you think that an adjudicated proceeding like this,
- 9 with lawyers and discovery, is an appropriate place to
- 10 work out complicated areas of public policy?
- 11 A. (Decker) I think that this -- this process is a very
- 12 thorough process, because wind power happens at the
- 13 local level, in towns, but it is reviewed by experts.
- 14 And, I think the SEC process is a great way to, you
- 15 know, get all the issues out and get them resolved in a
- 16 timely manner that, you know, can have, you know, real
- 17 businesses invest money in a project with an expected
- 18 timeline to which a decision will be made.
- 19 Q. Is that "yes" or "no"?
- 20 A. (Decker) That's a "yes".

21 MR. ROTH: Okay. I'd like to move to

22 admit Chapter 8 as an exhibit.

23 CHAIRMAN GETZ: Well, let's get the

24 entire Energy Plan. Well, I think we can take

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[WITNESS PANEL: Decker|Lyons]

- 1 administrative notice of the full document that's titled
- 2 the "New Hampshire Energy Plan Governor's Office of Energy
- 3 and Community Services November 2002". And, we'll take

4 administrative notice of that full document.

5 MR. ROTH: Okay. That's something like  
6 "judicial notice"?

7 CHAIRMAN GETZ: That's our corollary to  
8 it, yes, sir.

9 MR. ROTH: Okay.

10 BY MR. ROTH:

11 Q. All right. Now, turning your attention to Appendix  
12 Number 32 in the same Volume 2, it's "The New Hampshire  
13 Clean Power Strategy". Are you familiar with this  
14 document, Mr. Decker?

15 A. (Decker) I am familiar with this document.

16 Q. Have you read it?

17 A. (Decker) Yes, I read it sometime ago when we were  
18 compiling the Application.

19 Q. Is there anything in here about wind power?

20 A. (Decker) The reason why this is referenced is to focus  
21 on air emissions. And, again, the nature of the  
22 landscape of why renewables in New England are going to  
23 be accepted and why there's a case for this.

24 Q. So, isn't "The New Hampshire Clean Power Strategy"  
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1 really about making existing fuel-burning power plants  
2 cleaner?

3 A. (Decker) Yes.

4 Q. And, to a certain extent, addressing transportation,  
5 correct?

6 A. (Decker) That is the big issue around burning fossil  
7 fuels.

8 Q. Okay. And, didn't you testify earlier that the reason

9 you included these documents was because they -- I  
10 believe the mention you made was it "encouraged" --  
11 that "wind energy is encouraged in New Hampshire"? Is  
12 there anything in "The Clean Power Strategy" that says  
13 "go out and build wind turbines, wind farms in New  
14 Hampshire"? Is that anywhere in this document?

15 A. (Decker) It is not in this document. The purpose was  
16 to create a metric. People want to know what wind  
17 power can produce, what the equivalents are. So, doing  
18 these studies was an important way to kind of capture  
19 where 99 megawatts would fit within New England.

20 Q. So, is there anything in here that says "99 megawatts  
21 of wind power in New England is a good thing for The  
22 Clean Power Strategy"?

23 A. (Decker) Not directly, no.

24 Q. Okay. Now, I'm looking at your exhibit Appendix 33a.

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1 And, what -- are you familiar with this page?

2 A. (Decker) Yes, sir.

3 Q. Can you tell me what it is? Tell us what it is?

4 A. (Decker) This broadly discusses climate change and how  
5 it impacts New Hampshire.

6 Q. Okay. Now, if you look at the second page, the back of  
7 that, there's a suggestion on it that says on the back  
8 "What we all can do."

9 A. (Decker) Yes, sir.

10 Q. Is there any among those suggestions that say "go out  
11 and build industrial wind turbines and wind farms in  
12 New Hampshire"?

13 A. (Decker) I will read from the text here. "The

14 following are often mentioned at the international and  
15 national level. Several of these we can adopt at the  
16 local level." "Where possible, using renewable energy  
17 sources such as solar, wind, and biomass."

18 Q. Okay. Does that say "go out and build industrial wind  
19 farms in New Hampshire"?

20 A. (Decker) It seems difficult to be able to use wind if  
21 haven't built a renewable -- a wind power facility.

22 Q. Well, you've already said that you can buy renewable  
23 power over the grid, right? You don't have to build it  
24 here. You can buy it from Massachusetts or Vermont.

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1 A. (Decker) Oh, that's not actually correct.

2 A. (Lyons) Can I clarify that? I don't know of any  
3 renewable energy you can buy in Massachusetts.

4 A. (Decker) Well, Hull has one turbine.

5 A. (Lyons) One turbine. I think it's kind of being used  
6 in Hull. The whole New England region has a policy to  
7 encourage the development of renewable energy sources.  
8 And, I think, except for Vermont, there are mandated  
9 portfolio requirements on utilities to kind of document  
10 that, that demand. And, to date, the supply is far  
11 less than the demand. So, the market signal and the  
12 policy direction is to increase the supply of wind  
13 energy generation. And, it was for that purpose that  
14 we said that we were in conformance with the state  
15 energy and RPS policies.

16 Q. But, so far, none of the documents that we've talked  
17 about in your Application really say that. They don't  
18 say "go out and build a windfarm in New Hampshire", do

19 they? I mean, that's a fine closing argument and a  
20 nice policy statement, but that's not what these  
21 documents say, is it?

22 A. (Lyons) Well, I think -- I haven't seen those words  
23 anywhere.

24 Q. Okay.

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1 A. (Lyons) I think the mechanics of the policy was to  
2 induce supply by requiring demand.

3 A. (Decker) And, later in the document or in the  
4 Application, we do refer to the adoption of the  
5 Renewable Portfolio Standard.

6 Q. Okay. I mean, that's in your testimony, and that will  
7 be in your closing argument. This is my  
8 cross-examination.

9 A. (Decker) Yes, sir.

10 Q. I have one more to look at, and that's Appendix 33c,  
11 "The Climate Change Challenge". Are you familiar with  
12 this document?

13 A. (Decker) Yes, sir.

14 Q. Okay. All right. And, in general, what is this  
15 document about?

16 A. (Decker) This is, again, what you can do to promote the  
17 reduction of pollution. Again, there's focuses on  
18 transportation, and as well as encouraging alternatives  
19 for the people of New Hampshire to reduce their overall  
20 footprint.

21 Q. Okay. And, is there anything in here that encourages  
22 going out and building a windfarm in New Hampshire?  
23 That says, "yes, the thing to do to create climate

24 change in New Hampshire is to build a windfarm in New  
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1 Hampshire now." Does that say that in here?  
2 A. (Decker) No, sir.  
3 Q. No. In fact, doesn't it say, on Page 34, that it ought  
4 to be studied? It points out that, I'll just read from  
5 the last paragraph there, the next to the last  
6 sentence, "Overall, New Hampshire has the potential for  
7 wind produced power and more study is warranted."  
8 Isn't that -- Does that sound like a call to build a  
9 windfarm now or doesn't it say "study it first, figure  
10 out whether it's the right thing to do"?  
11 A. (Decker) Well, I guess I would actually point that this  
12 was a December 2001 piece. And, that currently it says  
13 -- can I read what it says?  
14 Q. Sure.  
15 A. (Decker) "NU is providing full funding for the project.  
16 Four towers were erected -- Four towers were erected to  
17 determine the feasibility of generating electricity".  
18 There are studies going on, and they discuss studies  
19 particular in Dixville Notch, and that was in 2001.  
20 Studies go on, but, at some point, rubber hits the  
21 road. And, I don't believe we're inconsistent with  
22 this.  
23 Q. Okay.  
24 A. (Decker) I mean, the wind data that we're using for  
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[WITNESS PANEL: Decker|Lyons]

1 this Project is incorporated from the studies that NU  
2 did here.

- 3 A. (Lyons) I think what Pip is saying is that, in this  
4 instance, this Project is succeeding directly from the  
5 study that was mentioned in this report.
- 6 Q. Well, let's look at what else is here. And, I  
7 understand your saying that, you know, studying the  
8 wind is one of the issues. And, obviously, you've made  
9 a point, "yes, they have studied some wind." I think  
10 it's clear that New Hampshire has a good wind resource,  
11 and I don't think we would argue with you about that.  
12 But look at the -- you know, that last paragraph again,  
13 where it says "Most of the favorable wind sites, for  
14 example, are located on federal lands", right?  
15 "Additionally, since the State places a high value on  
16 its natural environment and vistas, the siting of  
17 windmill may provoke strong local resistance." Isn't  
18 that -- That's what it says here. And, then it says  
19 "more study is warranted". So, it's not just about  
20 studying the wind, it's about studying appropriate  
21 locations, and about studying whether if there's strong  
22 local resistance, whether you can put it on federal  
23 land or state land. Isn't that what it says?
- 24 A. (Decker) Yes.

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[WITNESS PANEL: Decker|Lyons]

- 1 Q. Okay.
- 2 A. (Decker) But I would also caution that it says "may  
3 provoke".

4 MR. ROTH: Okay. I think I might be  
5 done. Just in time for lunch. Thank you very much.

6 CHAIRMAN GETZ: This looks to be a good  
7 time to break for the lunch recess. We will resume at

8 1:15, and then we'll turn to questions from the Committee.  
9 Thank you, everyone.

10 (Whereupon the lunch recess was taken at  
11 12:06 p.m. and the hearing resumed at  
12 1:20 p.m.)

13 CHAIRMAN GETZ: Okay. Good afternoon,  
14 everyone. We're back on the record in Site Evaluation  
15 Committee Docket 2008-04. And, we are turning now to  
16 questions from the Subcommittee to the Applicant's panel  
17 of Mr. Decker and Mr. Lyons. Any questions from the  
18 Subcommittee?

19 MR. IACOPI NO: Mr. Chairman, you might  
20 want to note that Mr. Normandeau and Mr. Scott are here at  
21 this time.

22 CHAIRMAN GETZ: Okay. All right. I  
23 will note for the record that Mr. Normandeau and Mr. Scott  
24 have returned safely from budget hearings before the  
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[WITNESS PANEL: Decker|Lyons]

1 Legislature. And, turn to Mr. Harrington.

2 MR. HARRINGTON: Yes. Just a few  
3 questions here.

4 BY MR. HARRINGTON:

5 Q. Yesterday, I believe, I think one of you two gentlemen  
6 stated, that there was an Alternatives Analysis done  
7 for the Project, and it had been submitted to the Army  
8 Corps of Engineers. Did I hear that correctly?

9 A. (Decker) That is correct.

10 Q. Okay. And, we'd like to get a copy of that. Is that  
11 in any of the submittals to us as of yet?

12 A. (Decker) No, but we can submit it.

13 CHAIRMAN GETZ: Okay. Let's make that  
14 Exhibit 46.

15 MR. IACOPI NO: Forty-six.

16 (Petitioner Exhibit 46 reserved.)

17 BY MR. HARRINGTON:

18 Q. And, I know, for good reason, we're not going to  
19 speculate on the cause of the Altona wind turbine  
20 failure, but there was a statement yesterday that a  
21 root cause analysis is being performed on that  
22 presumably as we speak. Two questions. When will that  
23 be available? When is it scheduled to be completed?  
24 And, will we be able to get a copy of it?

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[WITNESS PANEL: Decker|Lyons]

1 A. (Lyons) We don't know when it will be completed. But,  
2 when it is, we will endeavor to get you a copy. I  
3 think it may be subject to a confidentiality with  
4 General Electric. But --

5 Q. Most likely would be, yes.

6 A. (Lyons) But -- I can't say exactly how we will deal  
7 with that. But, certainly, they need to understand  
8 that it's required for permitting this project, and we  
9 will find a way to work within that confidentiality and  
10 provide you a copy under confidentiality.

11 MR. HARRINGTON: Mr. Chairman, how do we  
12 address something like that?

13 CHAIRMAN GETZ: Well, it seems like  
14 there's an issue of timing that we may have no reasonable  
15 forecast of. Mr. Patch.

16 MR. PATCH: Right. And, I would just  
17 suggest that, once we receive that, we don't know on the

18 timing, I think yesterday, in fact, Mr. Mandli testified  
19 that it could be a matter of months before that's  
20 completed. But, as soon as it is, we'd be happy to submit  
21 it to the Committee. And, we can address the  
22 confidentiality issue through a motion or whatever the  
23 appropriate way at the time. So, we'd be happy to do  
24 that.

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1 CHAIRMAN GETZ: Okay. Well, let's treat  
2 it this way. I don't think reserving an exhibit for it is  
3 going to be useful for deliberations or entirely  
4 necessary. But I would consider it a ruling from the  
5 Bench that we will memorialize, in any order in this  
6 proceeding, that, assuming that the Project goes forward,  
7 that you're required -- you will be required to file such  
8 a document regarding the root cause analysis.

9 MR. HARRINGTON: Thank you.

10 BY MR. HARRINGTON:

11 Q. Changing the subject. There was a lot of discussion  
12 this morning on sort of the downturn, I guess, in your  
13 business. And, was this something that was unique to  
14 Noble or was this representative of the wind industry  
15 in the United States as a whole over the last six to  
16 nine months?

17 A. (Lyons) This situation affected every wind company in  
18 the United States.

19 Q. Now, assuming the -- there's a lot of talk, and it's  
20 probably more than talk now, there's actually proposed  
21 bills, a lot of which would have either regionalization  
22 of costs or federal assistance for costs for

23 transmission to support renewables. Assuming that some  
24 of these came to fruition, is it safe to say that would

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1 have a very positive impact on your business?

2 A. (Lyons) I believe it would have a positive impact on  
3 business going forward. I don't know that it would  
4 have any direct impact on this Project, because this  
5 Project will have transmission capacity under the ISO  
6 process that we're going through right now. But, for  
7 future projects, certainly, it would have a positive  
8 impact.

9 CHAIRMAN GETZ: And, Mr. Harrington, I  
10 take it when you're saying "bills pending", you're  
11 discussing potential federal legislation?

12 MR. HARRINGTON: Yes. Potential federal  
13 legislation, yes. Because there was some concern over not  
14 just Noble's -- how it would affect this project, but  
15 Noble's overall financial viability, based on other  
16 projects. And, that's what I was trying to determine.

17 WITNESS LYONS: Yes. If I might add,  
18 there is legislation that has been enacted in the form of  
19 the President's Stimulus Package, that provides direct,  
20 immediate stimulus and support for the wind energy  
21 projects that we think will have significant positive  
22 impact on this Project.

23 MR. HARRINGTON: Okay. It may be best  
24 to hold that until we get to the specific financial issues

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1 then?

2 CHAIRMAN GETZ: Well, I mean, do you  
3 have follow-up or --

4 WITNESS DECKER: I would -- it's more  
5 addressed in our financial submissions.

6 MR. HARRINGTON: Okay. I'll just wait  
7 till then on that.

8 BY MR. HARRINGTON:

9 Q. New issue. The decommission funding, there was a lot  
10 of discussion on that over the last couple of days as  
11 well. And, we had the example of a hurricane being  
12 combined with a bankruptcy by Noble, which I think the  
13 response was "Well, even if Noble went bankrupt and the  
14 towers got knocked down by a hurricane, you'd still  
15 have the electrical footprint there. You'd still have  
16 all your permitting. And, you'd most likely be able to  
17 sell at a reduced cost to somebody who would come in  
18 and rebuild the project and put it back up, even if it  
19 wasn't Noble." And, that's -- you mentioned that that  
20 could be an insurable event, which I guess you could  
21 get hurricane insurance. Does the wind projects  
22 typically, and this one specifically, would you have  
23 insurance to protect yourself from let's just say a  
24 hurricane or an extreme wind event?

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[WITNESS PANEL: Decker|Lyons]

1 A. (Lyons) I'm not qualified to answer the insurance  
2 question.

3 Q. Okay.

4 A. (Lyons) But we can provide that in a record request.

5 Q. Or, you can defer it to the financial conversation.

6 A. (Lyons) Yes.  
7 Q. And, then, maybe you'll probably maybe give the same  
8 answer on this. Because one scenario that I looked at  
9 was probably a little bit higher probability than a  
10 hurricane coincident with a Noble bankruptcy would be  
11 some type of environmental discovery, a large amount of  
12 bat or bird kills or something, that didn't just shut  
13 the site down for Noble, but rendered it no longer  
14 applicable for wind applications, in which case you  
15 wouldn't be able to sell it to another wind producer,  
16 because presumably they would have the same problem.  
17 So, by not having any decommissioning funding for the  
18 first ten years, I mean, I don't know how remote the  
19 possibility is, but I think it's a real possibility  
20 that three or four or five years from now someone could  
21 re-evaluate the environmental conditions and say "You  
22 no longer can operate this particular facility at that  
23 location", there would be no decommissioning fund, and  
24 you'd still have the turbines that would have to go.

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[WITNESS PANEL: Decker|Lyons]

1 So, how would you address that issue?  
2 A. (Lyons) I don't know how specifically, but I would like  
3 to reiterate that, in general, we concur with others  
4 that -- that we need to have an adequate amount of  
5 funds available for decommissioning at such time as it  
6 may be necessary. But we would like to balance that  
7 with ensuring that unnecessarily large amounts of money  
8 are not tied up for long periods of time before they  
9 are necessary. And, where that exact balance is, I  
10 can't say, and I don't know that it is for me to say

11 unilaterally. We've made our proposal to the County.  
12 But, as I say, that is a matter for discussion. And,  
13 within the bounds of the principle that I just  
14 articulated, you know, we believe that we can come to a  
15 mutually agreeable outcome that will -- that will  
16 ensure the availability of those funds when they're  
17 needed.

18 But, again, I just want to be sure that  
19 it's tied, in part, to the issue about whether, and I  
20 don't want to digress too much here, but it's tied, in  
21 part, to the issue about whether the amount to be  
22 secured is the net decommissioning amount or the gross  
23 decommissioning amount. It's our expectation that the  
24 -- that there will be salvage value, and that it should

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1 correctly be estimated and subtracted from the gross  
2 commissioning costs, as a way of ensuring that an  
3 unnecessarily large amount of money isn't tied up. So,  
4 I think all of these things are connected. And, to the  
5 extent that the funds that are made available in  
6 security reflect estimated salvage costs, it helps --  
7 it helps to make sure that those funds are available  
8 earlier.

9 Q. Okay. And, my concern wasn't so much with the net  
10 versus gross, but the fact that there would be no  
11 decommissioning funds collected for the first ten  
12 years.

13 A. (Lyons) Yes, I understand that. Yes.

14 CHAIRMAN GETZ: Well, other questions  
15 from any other members of the Subcommittee? Well, let's

16 start, Mr. Northrop.

17 BY MR. NORTHROP:

18 Q. I have a question for either Mr. Lyons or Mr. Decker.

19 And, this has to do with an apparent discrepancy in the  
20 testimony, I'm not sure if it's a discrepancy or just a  
21 change in a stylistic way the statement is made. But  
22 this is in the original submission, in Volume 1, the  
23 Appendix (a), which is "Testimony of Charles Reading  
24 and Pip Decker". I'm going to read, it's in a question

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[WITNESS PANEL: Decker|Lyons]

1 and answer format, I'm going to just read the question,  
2 which is on Page 3, the question is at Line 14. And,  
3 the question is "Please describe how this project was  
4 initiated and what work has been done on the project  
5 prior to the submission of the Application." And, the  
6 first paragraph of the answer is on Line 16: "Wind  
7 power development is unique in that it requires three  
8 essential components in the development of a successful  
9 windpark: An adequate wind resource, proximity to  
10 transmission lines, and community support. This  
11 Project meets all three of those requirements." And,  
12 my question is that, in the answer that was given here,  
13 the three components "wind resource, proximity to  
14 transmission lines, and community support", there was a  
15 similar question and answer in the supplement, which is  
16 Volume 1a, Tab (a).

17 MR. IACOPI NO: That would be Petitioner

18 2.1.

19 BY MR. NORTHROP:

20 Q. And, this again, this is the "Supplemental Testimony of

21 Mark Lyons and Pip Decker". And, the similar location  
22 is on Page 5, the question that is at Line 7. And, the  
23 question was "Please explain why the site proposed for  
24 this Project was selected." And, in the first

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1 paragraph of the -- or, actually, in the entire answer,  
2 which starts on Line 8, I won't read it all, but the  
3 relevant portion was that -- was identified that the  
4 "key factors" -- or, excuse me, the "key features  
5 required for successful wind energy project  
6 development, including: An electrical transmission  
7 infrastructure, a large amount of available land, and  
8 strong wind resources" were the three reasons given.  
9 And, my question is, what happened to the "community  
10 support" piece? That it seems like two of those three  
11 are the same as the original one, but the community  
12 support seems to have disappeared. And, I was  
13 wondering, is that because the support is actually gone  
14 or is it just a stylistic change in the answer or if  
15 you could just perhaps explain that for me?

16 A. (Lyons) No. There are many things that are necessary,  
17 and community support is one of the most important.  
18 And, it was a matter of oversight that it was not  
19 included in the supplemental testimony, but we still  
20 consider it to be an essential precondition for  
21 successful wind energy development, and we continue to  
22 have strong community support in the Project area.

23 Q. So, just to summarize I guess, that it was more of a  
24 stylistic change as opposed to --

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[WITNESS PANEL: Decker|Lyons]

- 1 A. (Decker) That is correct.
- 2 Q. -- that the support is gone, so we're not going to  
3 include it in there?
- 4 A. (Lyons) No, that's not -- it was an oversight. And, if  
5 you'd like, Pip, you might talk about the manifestation  
6 of that community support.
- 7 A. (Decker) I guess I was kind of more speaking  
8 technically to this in updating the Application. I  
9 guess I kind of took it for granted that we had public  
10 support from the Coos County Planning Board, Coos  
11 County Commissioners, the Town of Dummer, various other  
12 people who live in the county. And, you know, we have  
13 that support and still have that support. And, I was  
14 more or less describing just the three things, I guess  
15 it should be four, I was just focused on three, to keep  
16 it simple.

17 MR. NORTHROP: Okay. Thank you.

18 CHAIRMAN GETZ: Dr. Kent.

19 DR. KENT: Yes. Thank you.

20 BY DR. KENT:

- 21 Q. I'd like to pursue this Alternatives Analysis issue a  
22 little bit better for clarification. And, I'll take  
23 answers from either one of you depending on whoever  
24 feels most appropriate to answer. What is the criteria

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[WITNESS PANEL: Decker|Lyons]

- 1 for developing and choosing the U.S. to develop it?  
2 Are you just a U.S. company or do you have the option  
3 of going overseas?
- 4 A. (Lyons) We are just a U.S. company.

- 5 Q. Okay. And, how did you narrow it down to New  
6 Hampshire? What was your criteria?
- 7 A. (Decker) Well, actually, the criteria was really New  
8 England first, and then the focus was then down to New  
9 Hampshire, on focusing on a project for New Hampshire.
- 10 Q. Okay. So, how did you get from New England -- how did  
11 you go from the whole country to New England first?
- 12 A. (Lyons) I think I can address that. There's value and  
13 interest on the part of the Company in developing a  
14 diverse portfolio of wind energy properties. That's a  
15 feature that is favored by investors and lenders, to  
16 have diversity in the portfolio. And, we started out  
17 as a company that is located in the Northeast, and  
18 began our development activities in the Northeast.  
19 And, we had a number of projects in New York, which are  
20 now up and running. And, we made a conscious -- well,  
21 Noble Environmental made a conscious decision to look  
22 elsewhere in other regions of the country. So, we  
23 explored New England, because we knew it had favorable  
24 market conditions. And, so, then we went through the

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- 1 normal steps of development to identify these key  
2 features, which is, you know, where the wind energy  
3 resources and the other physical and political  
4 attributes that make for a good project.
- 5 So, we found our way to Coos County,  
6 because it's within the New England market, and it's an  
7 area that we were aware has very strong wind resources.  
8 And, found the site by identifying the other  
9 preconditions that we talked about.

- 10                   And, coincident with that, we looked  
11 elsewhere in the country to help build this diverse  
12 portfolio; in places like Texas and Minnesota. But  
13 there was a conscious decision to have a national  
14 portfolio of wind energy projects.
- 15 Q. And, so, if I could further that, allowing to  
16 geographic diversity?
- 17 A. (Lyons) Yes, sir.
- 18 Q. So, you made a conscious effort to look for other  
19 opportunities in New England, and, based on wind, wind  
20 is one of the primary factors, --
- 21 A. (Lyons) Uh-huh.
- 22 Q. -- the Coos County area stood out?
- 23 A. (Witness Lyons nodding affirmatively)
- 24 Q. So, was Coos the best wind site or was that just one of

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- 1 the factors, you were looking also at the politics and  
2 the physical constraints simultaneously?
- 3 A. (Decker) Yes, there was kind of a three or four-pronged  
4 approach, really. How many and how much land is open  
5 and available for development, what the potential  
6 issues could be, based on experience in New York and  
7 other projects we've worked on in development, and  
8 where the -- where you can get the power out to.
- 9 Q. You said "other issues", does that include the  
10 environmental issues at that point in your search?
- 11 A. (Decker) "Other issues" would be transportation issues,  
12 are they close to towns, could you -- there could be  
13 great sites that, when you look at them, they look  
14 great, but the wind resource is not there, or, yes,

- 15 then you sort of quantify that out.
- 16 Q. Okay. Was it when you had identified a lot of positive  
17 attributes in Coos, and then you went to another level  
18 of planning and added in the environmental criteria?
- 19 A. (Decker) That's correct, sir.
- 20 Q. And, you initially had estimated this Project would  
21 occur in the Phillips Brook part of the area, right?
- 22 A. (Decker) That is correct, sir.
- 23 Q. And, I think I heard you say previously that you -- the  
24 environmental issues that came more to the forefront at

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- 1 this point, you had achieved the other attributes you  
2 were seeking, and environmental started to push to the  
3 forefront, you started to look at ways to minimize  
4 impacts. Is it correct to say that at that point you  
5 were driven to the alternative we see before us today?
- 6 A. (Decker) That is correct, sir.
- 7 Q. Okay. The Alternatives Analysis you're presenting to  
8 -- or has already provided to the Corps, does that  
9 outline this process?
- 10 A. (Decker) It outlines the process for the State of New  
11 Hampshire. What you are asking -- In the Application,  
12 we've described the on-site analysis, in terms of roads  
13 and the number of turbines we initially proposed and  
14 how we got to the site. That analysis we provided to  
15 the Army Corps describes other kind of larger detail.  
16 New Hampshire, the wind resources we looked at, and  
17 kind of qualifying this site and why it's -- we believe  
18 the best alternative for siting a renewable power  
19 facility.

20 DR. KENT: Thank you.  
21 WITNESS DECKER: You're welcome.  
22 MR. IACOPI NO: Mr. Chairman.  
23 CHAIRMAN GETZ: Mr. Scott.

24 BY DIR. SCOTT:

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1 Q. I'm not sure which of the two of you are the best to  
2 answer. Obviously, your earlier testimony yesterday,  
3 and I think some today, we've heard concerns about ice  
4 throws and general safety issues from the turbines  
5 themselves. Would you mind outlining in a little bit  
6 more detail what the project is proposing for limiting  
7 access to unauthorized personnel and the safety issues.  
8 How do you keep people from walking right up to the  
9 turbine, I guess would be my question?  
10 A. (Lyons) Well, our proposal to date, and we need to --  
11 we need to work within the bounds of the fact that this  
12 remains private land. So, you know, whatever  
13 restrictions we propose need to be acceptable to them  
14 as well. But, given that it is private land, there  
15 would be sort of a threshold limitation on public  
16 access to begin with. There is public access provided  
17 on the existing roads within the Project area that we  
18 propose to improve. But the new roads that we're  
19 proposing to build are the less segments of the road to  
20 each turbine string. And, our proposal would be to  
21 gate them and to put signs at the gates saying that  
22 there is no public access.

23 Beyond that, we haven't proposed to put  
24 up any fencing. I don't know, I suspect that would

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1 have a negative environmental impact, you know, on  
2 wildlife. So, it's a balancing. But our proposal is  
3 to put up gates, locked gates, with signs that tell the  
4 public to keep out.

5 DIR. SCOTT: If I may, Mr. Chairman?

6 CHAIRMAN GETZ: Please.

7 BY DIR. SCOTT:

8 Q. And, am I understanding that there are hiking and  
9 snowmobile trails that go in that area also, is that  
10 correct?

11 A. (Decker) There are limited hiking trails, snowmobile  
12 trails, associated with Dixville. There are no impacts  
13 to any of the other project facilities directly. And,  
14 we are working with those two parties that you  
15 mentioned.

16 Q. One more, if I could, unrelated to that question. In  
17 your supplemental testimony, in your questions and  
18 answers section, you mention or respond to a question  
19 regarding an inquiry with the New York Attorney  
20 General's Office. Is that financial in scope and that  
21 will be discussed next week or is that something  
22 appropriate to discuss now?

23 A. (Lyons) It's not financial, per se, so I guess it's  
24 appropriate for discussion now. Though, I don't know

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1 what more we can say about it, beyond the response that  
2 we provided. But I'm happy to --

3 Q. I was just curious of the nature of the request from  
4 the Attorney General's Office.  
5 A. (Lyons) I think we're all a little curious about that,  
6 frankly. You know, I need to, you know, I should say  
7 that this subpoena, I don't have a copy of the  
8 subpoena. It was a civil subpoena. But I read the  
9 subpoena. And, as I mentioned elsewhere, there's an  
10 absence in the subpoena of any specific allegations of  
11 wrongdoing. So, it requested a number of documents  
12 from us, but did not specify why they were being  
13 requested. So, it was kind of -- it was kind of a  
14 mystery, to me, what it was based on. I was not  
15 involved in the discussions with the New York Attorney  
16 General's Office, so I can't speak to exactly what took  
17 place there.

18 But, beyond that, I would -- I would not  
19 want to wonder too far from the response that was  
20 required by Noble Environmental management. So, I --  
21 But there were no allegations of wrongdoing in the  
22 subpoena. So, I don't know what prompted it, frankly.

23 Q. Thank you. If I could maybe ask another question on  
24 the same line. To your knowledge, was this subpoena

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1 just to Noble Energy or was it to all wind developers  
2 in the State of New York?

3 A. (Lyons) I'm aware that at least one other wind energy  
4 company in New York was served with the same subpoena.

5 DIR. SCOTT: Thank you.

6 CHAIRMAN GETZ: Director Normandeau.

7 BY DIR. NORMANDEAU:

8 Q. I just have a question. Yesterday, there was a lot of  
9 questions by Mr. Roth relating to the efficiency of the  
10 generating units, which you folks were looking to get  
11 about 97 percent availability out of, is that the goal,  
12 if I remember my numbers correctly?

13 A. (Lyons) Yes, we seek to achieve high availability, as  
14 was defined by Mr. Mandli yesterday.

15 Q. Right, I understand the issues outside of that. I was  
16 just curious what -- if you even know, how would that  
17 compare with other types of generation?

18 A. (Decker) I think he was --

19 Q. In other words, would -- I'm just curious, on an  
20 average, what's the availability of a coal plant in the  
21 U.S. or, I don't know if you know or not, I was just --

22 A. (Lyons) It's been a while. I don't know. I would  
23 imagine in the 80s or the 90s. It's a function of  
24 scheduled maintenance and forced outages, unscheduled.

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1 And, I don't know for a fact what those values are for  
2 fuel-burning power plants today.

3 DIR. NORMANDEAU: Okay. Thank you.

4 CHAIRMAN GETZ: Anyone else?

5 Mr. Harrington.

6 BY MR. HARRINGTON:

7 Q. Just to follow up on Mr. Scott's question. And,  
8 specifically, you mentioned Dixville Peak, as it does  
9 have public access via a hiking trail.

10 A. (Decker) Yes.

11 Q. And, given what we were told yesterday, that the  
12 manufacturer has somewhere in the vicinity of a 1,300

13 foot avoidance radius around the turbines, saying that,  
14 you know, "don't stay in this area if you can avoid  
15 it".

16 A. (Decker) Right.

17 Q. And, in fact, you've almost -- I mean, in some ways,  
18 this is going to be looked at as an attractive  
19 nuisance. I think people hiking up there are going to  
20 say "Oh, look at that. Let's go get a better look."

21 A. (Decker) Right.

22 Q. And, especially in the winter, where the trails tend to  
23 not necessarily conform to where the trails are  
24 designated and marked, but where people choose to go,

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1 and, once the first person breaks the trail, everybody  
2 -- that becomes the trail for the winter. You could  
3 get a large amount --

4 A. (Decker) Sure.

5 Q. -- or somewhat amount of people that would be  
6 approaching well within this 1,300 foot zone there.  
7 And, so, I guess I encourage you to come up with  
8 something that we -- we'd probably like to see  
9 something of a more positive nature, as far as what  
10 you're going to do to keep people, especially at the  
11 Dixville Peak area, because, assuming that the trail  
12 must go -- goes to the top of the mountain, and it  
13 looks like your towers are strung out right across  
14 there, it's going to be a close proximity for them.  
15 And, even if you were to move the trail a couple of  
16 hundred feet, I still think you could have a problem  
17 with people just straying off the trail and visiting

18 there, which may get them to stray away from any signs  
19 you put up as well.

20 A. (Decker) Yes.

21 Q. So, I think that's something that needs further  
22 consideration.

23 A. (Decker) Yes. Well, I mean, in part, we've been  
24 working with the Cohos trekkers to keep them apprised

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1 of the Project. And, the e-mail I received from them  
2 last night was that this windpark is largely compatible  
3 with the trail. I think the important thing for us is  
4 to keep people aware of the conditions, as Dan Mandli  
5 suggested, and certainly an event can happen. And,  
6 full knowledge and disclosure of where the Project is  
7 going to be sited, once it's built, so that they can  
8 relay it to their organizations where the turbines are  
9 and provide those kind of information and knowledge for  
10 other people that will ultimately go up there.

11 And, just a personal note, to go up to  
12 Dixville Peak and hike by yourself, that's a long  
13 afternoon. For the people that do go up there, you  
14 know, have -- it's rare to see people hiking up there  
15 in the wintertime. But, in the summertime, yes, there  
16 are people that will hike up there. In the winter,  
17 it's more the snowmobiling set that can make it. It's  
18 just very remote.

19 Q. Okay. Just a couple, these should be very quick  
20 questions on, because I was a little confused by some  
21 of the discussion this morning. There was a lot of  
22 talk about the Coos County Commission and the Master

23 Plan of Coos County. And, I just want to see if this  
24 is correct. Is the Coos County Commission on record as  
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1 stating they believe this Project is in compliance with  
2 the Coos County Master Plan?

3 A. (Decker) I would have to check the record. The Coos  
4 County Planning Board is on record of supporting this  
5 Project. To the extent that's compatible with the  
6 exact plan you're referencing, I would have to look  
7 again. If the Coos County Commissioners are also on  
8 record as this being I believe a compatible use, but I  
9 will also check the record.

10 Q. So, that they've said they're in favor of the Project,  
11 but you just haven't heard the words "in favor" and  
12 "complies with the Master Plan" in the same sentence?

13 A. (Decker) In the same sentence. I will double check for  
14 you, but they are in favor of the Project.

15 Q. And, the same thing for the, and maybe this is more  
16 specific -- an easier question to answer. On the  
17 permitting issue for the met towers, under that section  
18 that we were reading there, you did obtain a permit  
19 from Coos County for the installation of met towers?

20 A. (Decker) All meter -- Yes. All meteorological met  
21 towers have received permits, yes.

22 Q. Okay. The emergency response plan, specifically have  
23 to do with fire, is there any type of special  
24 equipment that might be needed for the local fire

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1 departments to deal with fires associated with the

- 2 turbines?
- 3 A. (Lyons) We think not. Certainly, if there was a fire  
4 up tower, in one of these wind machines, we would -- we  
5 would propose that the area be cordoned off, and the  
6 fire be allowed to burn itself out. If there's no need  
7 to go up in the tower, you know, the only situation  
8 would arise if somehow a fire were caused on the  
9 ground. And, we expect that the local fire departments  
10 have the equipment that they need to fight fires on the  
11 ground now. But we will be consulting with them. And,  
12 if they any new equipment to do that, we will provide  
13 it for them.
- 14 A. (Decker) May I add a follow-up?
- 15 A. (Lyons) Uh-huh.
- 16 A. (Decker) The Project roads are designed in compliance  
17 with the fire trucks, the maneuverability, and the  
18 access for the switchyard and the substation in the  
19 Town of Dummer as well. So, that is addressed in our  
20 civil designs.
- 21 Q. Is there any need for a special training for the local  
22 fire departments, because of conditions they may  
23 encounter due to the presence of the wind turbines?
- 24 A. (Lyons) I'm not aware of any specific training. But we  
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- 1 will have our operations people speak with them about  
2 that, and whatever training is required will be  
3 provided.
- 4 Q. So, do you -- I'm trying to get this. Is there a  
5 formal agreement where you're going to reach out to the  
6 local fire departments and sit down and come to some

7 written agreement or is this going to be more of a  
8 casual thing, where you just talk to them and come to a  
9 mutual understanding of what needs to be done?  
10 A. (Lyons) Well, we envision that this would be -- that  
11 our reaching an informal agreement would be a condition  
12 of the Certificate, and that's what we proposed  
13 specifically to the County. But, whether it is or it  
14 isn't, we are committed to developing that cooperation  
15 and agreement. And, we're happy to put it in writing,  
16 if necessary.

17 MR. HARRINGTON: All right. Thank you.

18 CHAIRMAN GETZ: Any other?

19 MR. IACOPI NO: I just have a few  
20 questions, Mr. Chairman. I'm going to stand up so that  
21 Steve can hear me.

22 BY MR. IACOPI NO:

23 Q. The first question is pretty simple, but I'm a little  
24 confused. Today you indicated the Company has gotten  
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1 smaller, in terms of the number of employees. But I  
2 thought that I had read that your Operations Division  
3 had actually grown. Is that correct?

4 A. (Decker) That's correct. I believe the number of  
5 operational employees -- the number of operations jobs  
6 has doubled to 60, and there were no reductions in  
7 staff during that period.

8 Q. Now, has that overall caused a growth in the number of  
9 employees in the Company or do you still have less  
10 employees than you had at the time of the Application?

11 A. (Decker) There are less employees overall.

- 12 Q. So, you've lost employees, where, in the development  
13 end of things?
- 14 A. (Decker) And more focused on construction as well. We  
15 had an in-house construction team that finished  
16 projects, and no longer have an in-house construction  
17 team as big as it was when we filed.
- 18 Q. And, do you call all of your employees "wind  
19 professionals"? Is that everybody in the Company is  
20 called that?
- 21 A. (Decker) I would like to say I'm a "wind professional".
- 22 Q. Well, I understand that. But is your secretary a "wind  
23 professional", at least when you're referring to that  
24 in your documents?

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- 1 A. (Decker) I would think that "wind professional" would  
2 be an adequate description of a Noble employee.
- 3 Q. Okay. I just want to know, that, clearly, there's  
4 employees beyond the wind professionals.
- 5 A. (Lyons) May I ask where the reference was?
- 6 Q. I believe it was in Mr. Mandli's testimony, he talks  
7 about "wind professionals" and increasing the number of  
8 wind professionals. And, all I'm trying to find out is  
9 if that includes just people who you might think of as  
10 professionals, because they're an engineer or a lawyer,  
11 or does that include everybody right now down to the  
12 clerks that are filing for you?
- 13 A. (Lyons) That's helpful. Thank you for clarifying that.  
14 Because, when Mr. Mandli uses that term, he's speaking  
15 about wind energy operators, which would be technicians  
16 and mechanics and controls people who work in his

17 Operations outfit.

18 Q. Okay. My next question goes to the -- today you  
19 indicated that you first put up some met towers down in  
20 Bayroot, I think it was. And, the idea at that time  
21 was based upon the original plan with the 1.5 megawatt  
22 units, is that correct?

23 A. (Decker) It was the Phillips Brook tract.

24 Q. Phillips Brook, I'm sorry?

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1 A. (Decker) That is correct, sir.

2 Q. And, is the data that you obtained from those original  
3 met towers that were put in, one as early as 1999, I  
4 think you said, is that extrapolated to the area where  
5 the Project is now?

6 A. (Decker) By "extrapolated", you mean "correlated"?

7 Q. Well, I guess my question is, is that data relevant in  
8 any way to where you have the Project positioned now?

9 A. (Decker) Yes, it is.

10 Q. And, could you just explain for the record how?

11 A. (Decker) It's relevant for a few reasons. It helps  
12 allow you to have corresponding meteorological  
13 stations, even though they were in the past and there  
14 are gaps in the timing, you also have other historical  
15 meteorological points, such as the Berlin Airport, to  
16 which you can compare. And, you can understand some of  
17 the more technical reports that you receive, such as  
18 Wind Logics, and compare those against the actual  
19 on-site data that you have. So, those outside  
20 meteorological towers are valid to basically see how  
21 our current meteorological towers are performing on a

22 year over year or kind of ten year average or longer  
23 basi s.

24 Q. Next questi on goes back to decommi ssi oni ng. And, I  
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1 understand that you're in the process of negoti ating a  
2 decommi ssi oni ng pl an wi th Coos County. Do you know  
3 what your posi ti on is wi th respect to what condi ti ons,  
4 if any, shoul d be placed on a Certi fi cate, if one is  
5 granted in thi s case, as it pertai ns to decommi ssi oni ng  
6 of the faci li ty? Or, do you just leave that to your  
7 counsel talki ng?

8 A. (Decker) Well, no, I thi nk it's i mportant. We focused  
9 on the County, we have an agreement wi th the County to  
10 make sure that the County is safe, and that  
11 decommi ssi oni ng pl an does have other attri butes  
12 associ ated wi th publi c safety. You know, we woul d like  
13 to have an agreement reached between the County and  
14 Grani te Reli able for a decommi ssi oni ng pl an. And,  
15 perhaps a condi ti on i mposed by the SEC woul d be that  
16 the Coos County government is the lead agent on  
17 handli ng thi s decommi ssi oni ng pl an and ensuri ng its  
18 enforceabi li ty through thi s Project.

19 Q. So, you i ntend to argue that, as a condi ti on of a  
20 Certi fi cate, if one is granted, be that you, prior to  
21 some poi nt, there be an agreed upon decommi ssi oni ng  
22 pl an, as opposed to the Commi ttee determi ni ng a  
23 decommi ssi oni ng pl an on i ts own?

24 A. (Decker) I thi nk the County Commi ssi oners have a vested  
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1 interest in ensuring the safety here. So, yes.  
2 Q. And, finally, there was some testimony about activities  
3 that your Company undertook before filing the  
4 Application. And, there was reference to discussions  
5 with State entities, with environmental organizations,  
6 landowners, and a number of other stakeholders in the  
7 process. Do you feel that you did have a constructive  
8 dialogue with those various entities?  
9 A. (Decker) Before filing this Application?  
10 Q. Yes.  
11 A. (Decker) Yes.  
12 Q. Did you involve State agencies in that dialogue?  
13 A. (Decker) Absolutely.  
14 Q. Please tell us how.  
15 A. (Decker) I will speak to the State agencies first.  
16 Before filing this Application, we met and established  
17 certain protocols for environmental studies. Those  
18 protocols were established, Stantec can speak to it  
19 further, Fish & Game was consulted regarding certain  
20 tracking surveys. We then, as the studies proceeded,  
21 we had New Hampshire Audubon Society come and do work  
22 and look at the Project as well. Before this  
23 Application was filed, we did a number of technical  
24 sessions to review all the material that you will find

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1 in your appendices related to.  
2 Q. Who was involved in those?  
3 A. (Decker) Involved in those was New Hampshire Fish &  
4 Game, New Hampshire DES, U.S. Fish & Wildlife Service,

5 U. S. Army Corps of Engineers, the EPA, New Hampshire  
6 Heritage Bureau came later, at the second technical  
7 session. And, I'm trying to think of anyone else. The  
8 purpose was to -- we had every state and federal  
9 representative on the Project site to visit before we  
10 filed this Application. We had shared all of the  
11 studies that were included in this Application, as it  
12 relates to environmental and engineering and wetlands,  
13 and we reviewed them and encouraged comments in order  
14 to help us make a better windpark.

15 Q. Just were there other environmental organizations  
16 involved in that dialogue, other than the Audubon  
17 Society and New Hampshire Heritage Bureau?

18 A. (Decker) That came to these technical sessions? No.

19 Q. Or, that you involved in your consideration of siting  
20 this plan?

21 A. (Decker) I also attended technical sessions for wind  
22 power siting guidelines, but no direct involvement.

23 MR. IACOPI NO: I don't have any other  
24 questions, Mr. Chairman. Thank you.

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1 CHAIRMAN GETZ: Okay. Any other  
2 questions from the Subcommittee?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Hearing nothing,  
5 then redirect, Mr. Patch?

6 MR. PATCH: I have just a few questions,  
7 Mr. Chairman. Thank you.

8 REDIRECT EXAMINATION

9 BY MR. PATCH:

10 Q. First of all, in response to some questions yesterday,  
11 or at least you had some questions yesterday I think  
12 with regard to the System Impact Study, and there  
13 appeared to be a suggestion that Noble might have in  
14 some way contributed to the delay in getting that  
15 study. I wonder if you could tell the Committee  
16 whether Noble in any way contributed to that delay?  
17 Was there anything that Noble didn't respond to or  
18 anything that you did do that could cause that delay or  
19 has caused that delay?

20 A. (Decker) There are no delays on behalf of Noble  
21 Environmental.

22 Q. So, that's totally within the control of the ISO?

23 A. (Decker) That is correct, yes.

24 A. (Lyons) Yes.

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1 Q. Secondly, there was a discussion yesterday about the  
2 cost of the re-sagging, essentially the contract with  
3 PSNH, in order to tighten up the lines, as I think you  
4 described it, because of the additional heat that would  
5 be put on them. And, I heard a couple of different  
6 figures. I think, in the original Application, there  
7 was a figure of 14 to \$15 million. And, then, there  
8 was a figure of, I think, \$8.6 million that you  
9 discussed in your testimony yesterday. Could you just  
10 clarify for the Committee what the total figure is that  
11 Noble will have to pay to PSNH and what that covers?

12 A. (Decker) The total cost, in my current estimate, is  
13 \$8.625 million. That would cover all of the related  
14 work associated with bringing the loop to -- up to

15 standard to hold 99 megawatts of wind power.  
16 Q. There were also some questions with regard to the  
17 Master Plan involving the Town of Dummer. And, I know,  
18 in the record, there are at least a couple of pieces of  
19 correspondence from the Town of Dummer. And, I guess I  
20 would ask you to maybe describe those, if you could  
21 briefly. I believe they are Appendix 47 and 48,  
22 contained in Volume 6, which is Petitioner 2.2. Do you  
23 have that there on the table? I wonder if you could  
24 describe for the Committee, first of all, what Appendix  
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1 47 is.  
2 A. (Decker) Yes.  
3 Q. Thank you.  
4 A. (Decker) Yes. Appendix 47 is what Granite Reliable  
5 Power and the Town of Dummer have asked to be put into  
6 the Certificate, the potential Certificate for this  
7 Project. It addresses the concerns that the Town of  
8 Dummer has raised and has received input from about  
9 this Project.

10 MR. ROTH: Mr. Chairman, I'd like to  
11 object to this particular question line. The exhibits are  
12 in the -- are already submitted. Mr. Decker has already  
13 had his opportunity to make his direct testimony. And,  
14 this is simply reiterating, restating, highlighting  
15 testimony and exhibits that are already on the record and  
16 completely unnecessary as a form of redirect.

17 CHAIRMAN GETZ: Well, I would -- I'll  
18 overrule the objection. I think it's a fair area of  
19 redirect, given the cross-examination you did with respect

20 to the Town of Dummer Master Plan. But we don't need to  
21 read the entire document into the record.

22 MR. PATCH: No.

23 WITNESS DECKER: These are just the  
24 proposed conditions of the Town of Dummer that were  
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1 requested to be issued -- included in a potential  
2 Certificate.

3 BY MR. PATCH:

4 Q. And, could you just describe for the Committee, too,  
5 what Appendix 48 is?

6 MR. ROTH: The same objection.

7 CHAIRMAN GETZ: The objection is  
8 overruled.

9 BY THE WITNESS:

10 A. (Decker) This is a letter from the Town of Dummer  
11 describing the concerns about the Project, how they  
12 were resolved, and that they will -- they want to  
13 express their unconditional approval of this Project,  
14 their support for it.

15 BY MR. PATCH:

16 Q. There was a question for you I believe that Mr. Roth  
17 had with regard to whether or not the area, and I think  
18 it was in the Town of Dummer, but it may have involved  
19 some of the other unincorporated areas, was zoned  
20 commercial or industrial. Are you familiar with the  
21 types of areas that are typically zoned commercial or  
22 industrial in a municipality?

23 A. (Decker) No. No, I'm not.

24 Q. Okay. Are you aware of any windparks that are actually

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- 1 located in areas that are zoned as commercial or  
2 industrial?
- 3 A. (Decker) No, not to my knowledge.
- 4 A. (Lyons) I'm aware of one.
- 5 Q. You are. Okay.
- 6 A. (Lyons) The Steel Winds project that was referred to  
7 yesterday that has the Clipper machines. It's on a  
8 brownfield site in Lakowana, New York.
- 9 Q. And, are any of the other windparks, to the best of  
10 your knowledge that Noble is involved in, in areas that  
11 are zoned commercial or industrial?
- 12 A. (Lyons) No, it's a rarity.
- 13 Q. And, does that have something to do with where the wind  
14 resources are located?
- 15 A. (Lyons) It has a great deal to do with it. Typically,  
16 an industrial zoned area does not offer all of the  
17 preconditions necessary for a wind energy project,  
18 including the availability of wind energy resources.  
19 They tend to be located in remote areas.
- 20 Q. Mr. Roth asked you some questions about the 2006 Master  
21 Plan prepared by Coos County. And, when he asked you  
22 to walk through some of the policies, I think he left  
23 out actually some of the goals that are mentioned in  
24 there. And, I have a few of them.

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- 1 MR. ROTH: I object again. This has  
2 already been covered in their Application and in their  
3 testimony. And, frankly, you know, I wasn't allowed to do

4 as much walking through that policy as I would have liked.  
5 And, so, I'd object to them having the same opportunity to  
6 redo what they have already done.

7 CHAIRMAN GETZ: The objection is  
8 overruled. I think it's a fair area for redirect, given  
9 the recross. But I expect it to be a brief treatment of  
10 the issues.

11 BY MR. PATCH:

12 Q. I just have actually three of the goals that I would  
13 like to point out. Maybe if could read the goals into  
14 the record that I have a brief tab next to, and tell  
15 the page number and if you can tell the cite, what the  
16 goal is and whether you think this project is  
17 consistent with that goal?

18 A. (Decker) "Air and Resources", on Page 24, letter "g".  
19 The goal is to "Protect and enhance the quality of air  
20 resources throughout the County's unincorporated  
21 places." I believe Granite Reliable Power is doing so.  
22 For "Energy Resources", the goal is on (i), Page 25,  
23 "to support environmentally sound and socially  
24 beneficial utilization of indigenous energy resources."

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1 I believe we are meeting that goal. The third and  
2 final goal is "Development", and the goal is found on  
3 Page 26. The goal is "At the location of new  
4 development, in order to protect and conserve forest,  
5 recreational, plant or animal habitat and other natural  
6 resources, to ensure the compatibility of land uses  
7 with one another and to allow for a reasonable range of  
8 development opportunities." I believe Granite Reliable

- 9 is also in compliance with this goal.
- 10 Q. And, then, finally, I just have a question with regard  
11 to, as a follow-up to some questions you were asked  
12 about emergency response preparations or training. I  
13 don't know if you can take a look at Appendix 53, which  
14 is in Volume 6 as well. And, I believe that contains  
15 the Draft Conditions to SEC Certificate to reflect  
16 agreement between Granite Reliable Power and Coos  
17 County. And, I would refer you to the third page of  
18 that, where it has a number "8", and then, under that,  
19 it has some proposed conditions that relate to  
20 emergency response. And, if you were to look at, as an  
21 example, 8(b), could you read the first sentence of  
22 8(b).
- 23 A. (Lyons) "GRP shall cooperate with the County's  
24 emergency services to determine the need for the  
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- 1 purchase of any equipment required to provide an  
2 adequate response to an emergency at the Project that  
3 would not otherwise need to be purchased by the  
4 County."
- 5 Q. And, then, could you read into the record 8(e).
- 6 A. (Lyons) "GRP shall provide training to emergency  
7 response personnel identified by the County. Those  
8 identified for training will include first alarm,  
9 mutual aid responders" --
- 10 Q. I think that's sufficient.
- 11 A. (Lyons) Thank you.
- 12 Q. Then, if you look at 8(f).
- 13 A. (Lyons) "GRP shall maintain fire alarm systems and fire

14 extinguisher equipment that are installed in all wind  
15 turbines and facilities."

16 MR. PATCH: Okay. That's good. That's  
17 all the questions I have. Thank you.

18 CHAIRMAN GETZ: Okay. Thank you. Is  
19 there anything further from the Subcommittee for those  
20 witnesses? Mr. Normandeau.

21 DIR. NORMANDEAU: Just one real quick  
22 question, one quickie.

23 BY DIR. NORMANDEAU:

24 Q. On the fire system and fire extinguisher equipment, do  
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1 those -- do the turbines have automatic actuating fire  
2 equipment, such as, for example, I'm used to having in  
3 the engine rooms of commercial boats?

4 A. (Lyons) I believe there is fire suppression equipment  
5 in the nacelle. But, if we could take a record request  
6 to provide the specifics, we would be happy to do so.

7 CHAIRMAN GETZ: Well, it seems like it's  
8 not really necessary to have a record request for this. I  
9 would just say --

10 DIR. NORMANDEAU: That's fine.

11 BY THE WITNESS:

12 A. (Lyons) I think the short answer is "yes".

13 DIR. NORMANDEAU: The answer is "yes"?  
14 Okay.

15 CHAIRMAN GETZ: If we could get one  
16 person on the record at a time for Mr. Patnaude. We would  
17 ask that, at some later time during proceedings, counsel  
18 provide, as an offer of proof in answer to that question.

19 MR. PATCH: Okay.

20 MR. ROTH: Mr. Chairman, I guess I would  
21 ask, with respect to that, that they provide documentation  
22 concerning the technical specifications of the equipment,  
23 which demonstrates that there is fire suppression  
24 equipment inside of it.

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1 CHAIRMAN GETZ: Okay. Then, well, I  
2 will strike my last ruling, and we will reserve, as  
3 "Exhibit Number 47", a response, with appropriate  
4 documentation, regarding the fire suppression equipment  
5 that would be found in the turbines proposed for this  
6 Project.

7 (Petitioner Exhibit 47 reserved.)

8 MR. ROTH: Thank you.

9 CHAIRMAN GETZ: Okay. Anything else  
10 from the Subcommittee or counsel?

11 (No verbal response)

12 CHAIRMAN GETZ: Okay. Hearing nothing,  
13 then the witnesses are excused.

14 MR. ROTH: Mr. Chairman, don't I get a  
15 recross?

16 CHAIRMAN GETZ: Well, if you can show  
17 good cause why you get recross.

18 MR. ROTH: I'd be happy to try.

19 CHAIRMAN GETZ: Because the standard  
20 procedure is that the Applicant gets to go last, on all  
21 witnesses, the counsel that offers the witness gets to go  
22 last. So, what's the subject matter of your proposed  
23 cross?

24

MR. ROTH: The Dummer zoning. It  
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1 appears that Mr. Decker contradicted himself from this  
2 morning, and I want to clarify what his position is on it.

3 CHAIRMAN GETZ: Okay. And, this is with  
4 respect to his references to Appendices 47 and 48, from  
5 Volume 6, and the Master Plan?

6 MR. ROTH: No, I think it would probably  
7 be the Dummer Zoning Ordinance, not the -- not the  
8 agreement that they reached with the Town of Dummer.

9 CHAIRMAN GETZ: Okay.

10 MR. ROTH: This morning Mr. Decker  
11 testified that he didn't -- he believed that the area  
12 where the Project is being located is not zoned  
13 commercial/industrial. And, this afternoon he appeared to  
14 say he "didn't really know". And, I'm not sure what the  
15 answer is. And, there are some consequences that come  
16 from that.

17 CHAIRMAN GETZ: Ask your question.

18 MR. ROTH: All right.

19 RECROSS-EXAMINATION

20 BY MR. ROTH:

21 Q. Mr. Decker, you testified this morning that you believe  
22 that the area in Dummer, where the project is located,  
23 is not zoned commercial/industrial. And, this  
24 afternoon you said something a little bit different.

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1 Which one is the right answer? Do you believe that the

2 area is zoned commercial/industrial or do you believe  
3 it's zoned something else?

4 A. (Decker) I don't -- I stick to what I said this  
5 morning. I apologize. That it's not zoned for  
6 commercial/industrial.

7 Q. Okay. And, then, with respect to the Town of Dummer,  
8 you've indicated that the Project doesn't have any wind  
9 turbines in the Town of Dummer?

10 A. (Decker) That's --

11 MR. PATCH: Mr. Chairman, I think he's  
12 going beyond what he said he had to ask about. This isn't  
13 --

14 CHAIRMAN GETZ: Well, I'm going to  
15 permit the follow-up. Let's see where we're going. I  
16 think you need to finish your question.

17 BY MR. ROTH:

18 Q. Well, is it true that there are no wind turbines in the  
19 Project in the Town of Dummer?

20 A. (Decker) That's right.

21 Q. And, why is it?

22 A. (Decker) Because the wind resource is found in the  
23 unincorporated places.

24 Q. Okay. So, there's no wind resource there?

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1 A. (Decker) There's some wind in Dummer, but not that we  
2 are proposing to capture.

3 MR. ROTH: Okay. That's all. Thank  
4 you.

5 CHAIRMAN GETZ: You have an opportunity  
6 for re-redirect on that single issue.

7 MR. PATCH: No, thank you, Mr. Chairman.

8 CHAIRMAN GETZ: Okay. Anything further  
9 from the Subcommittee?

10 (No verbal response)

11 CHAIRMAN GETZ: Hearing nothing, then  
12 the witnesses are excused, I guess subject to recall,  
13 depending on the status of the mitigation plan.

14 WITNESS LYONS: Yes, sir.

15 CHAIRMAN GETZ: Thank you, gentlemen.

16 WITNESS LYONS: Thank you.

17 CHAIRMAN GETZ: Well, let's take five  
18 minutes. And, my understanding is the next witness is --  
19 is it Ms. Vissering?

20 MS. GEIGER: Yes.

21 CHAIRMAN GETZ: Okay. Well, a very  
22 quick recess, and we'll begin with direct examination of  
23 Ms. Vissering.

24 (Recess taken at 2:16 p.m. and the  
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1 hearing reconvened at 2:24 p.m.)

2 CHAIRMAN GETZ: Okay. We're back on the  
3 record. And, we will turn to the Applicant's witness, Ms.  
4 Vissering. And, Mr. Patch, if you could conduct your  
5 direct examination please.

6 MR. PATCH: Okay. Thank you,  
7 Mr. Chairman.

8 (Whereupon Jean Vissering was duly sworn  
9 and cautioned by the Court Reporter.)

10 JEAN VISSERING, SWORN

11 DIRECT EXAMINATION

12 BY MR. PATCH:

13 Q. Could you please state your name for the record.

14 A. It's Jean Vissering.

15 Q. And, are you the same Jean Vissering who submitted  
16 prefilled testimony in this docket, which has been  
17 marked as "Petitioner's Exhibit 15"?

18 A. Yes, I am.

19 MR. PATCH: And, just for the Committee,  
20 that's Volume 1, Tab (g).

21 BY MR. PATCH:

22 Q. Did you also submit supplemental prefilled testimony in  
23 this docket, which has been marked as "Petitioner's  
24 Exhibit 16"?

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1 A. Yes, I did.

2 MR. PATCH: And, for the Committee,  
3 that's Volume 1a, Tab (g).

4 BY MR. PATCH:

5 Q. And, do you have any corrections or updates to either  
6 your prefilled or supplemental prefilled testimony?

7 A. I have three very minor corrections. Shall I begin?

8 Q. Yes.

9 A. In the Visual Assessment -- Visual Impact Assessment  
10 Report --

11 Q. And, maybe just for --

12 A. And, Mr. Patch, maybe you can help me out with the  
13 specific reference.

14 Q. Yes. I believe that's in Volume 1 -- I'm sorry, Volume  
15 2, Petitioner 1-2. And, I knew that this morning, I  
16 just don't remember it right now.

17 A. Okay?

18 Q. If you go ahead and make the correction, and I'll make  
19 the cite for the record.

20 A. Okay. The correction is on Page 27, and it is a  
21 photograph, Figure 24. At the end of the caption  
22 underneath that photograph, it's, in parentheses, it  
23 says "VP 22, 5 miles (8 kilometers)". That reference  
24 was actually to Dixville Peak, and it should read

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1 i nstead "VP 22, 2.6 miles (4.2 kilometers)".

2 MR. IACOPI NO: And, just for the  
3 Commi ttee's reference, that's Vol ume 2, Appendi x Number  
4 11. What page was thi s, Ms. Vi sseri ng?

5 WITNESS VI SSERI NG: Page 27. It's the  
6 photograph at the top.

7 MR. IACOPI NO: Mr. Patch, you might have  
8 to repeat that, just so the Commi ttee can see where she's  
9 speaki ng.

10 MR. PATCH: Yes. No, I apol ogi ze. I  
11 knew thi s morni ng, but I forgot the ci te.

12 BY MR. PATCH:

13 Q. Appendi x 11. And, what page again was that, Ms.  
14 Vi sseri ng?

15 A. Page 27. And, i t's Fi gure 24. Shall I repeat the  
16 correcti on?

17 Q. The correcti on, i f you coul d, yes.

18 A. It is i n the capti on underneath that photograph, the  
19 Fi gure 24. The parentheses currentl y reads "VP 22, 5  
20 miles (8 ki lometers)". It shoul d read "VP 22,  
21 2.6 miles (4.2 ki lometers)". Okay. The next two

22 corrections are in my supplemental testimony.

23 MR. PATCH: And, just for the record,

24 your supplemental testimony again is "Petitioner

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[WITNESS: Vi sseri ng]

1 Exhi bi t 16".

2 MR. IACOPI NO: Vol ume 1a, Appendi x (g).

3 BY THE WITNESS:

4 A. Okay. And, this correcti on is on Page 2, Li ne 15.

5 And, this is very minor. But there should be a period

6 after the term -- after the word "plan", it says "term

7 plan", and then there's no space or period there. And,

8 the final correcti on is in that same document, on Page

9 5, Li ne 2, the questi on, there was a "woul d", the word

10 "woul d" is mi ssi ng. "Has your opi ni on of whether thi s

11 Project woul d have an unreasonabl e adverse effect", the

12 "woul d" was left out.

13 BY MR. PATCH:

14 Q. Okay. Ms. Vi sseri ng, then, with the correcti ons that

15 you've just descri bed, if you were asked the same

16 questi ons contain ed in Exhi bi ts 15 and 16 under oath

17 today, woul d your answers be the same?

18 A. Yes.

19 MR. PATCH: Okay. The wi tness is

20 avai labl e for cross-exami nati on.

21 CHAIRMAN GETZ: Okay. Thank you. Ms.

22 Li nowes, do you have questi ons for thi s wi tness?

23 MS. LI NOWES: Yes, Mr. Chai rman, I do

24 have a few.

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[WITNESS: Vi sseri ng]

CROSS-EXAMINATION

1

2 BY MS. LINOWES:

3 Q. Ms. Vissering, my name is Lisa Linowes. We've met  
4 before.

5 A. Yes.

6 Q. And, I have similar questions to those that I've asked  
7 you in the past, in a different venue. But, in that  
8 document that you were referencing, this would be  
9 Appendix 11 of Volume 2, I believe, where you have your  
10 -- the visuals, simulations, it would be starting on  
11 Pages 16, and going through to 28, 29, and actually 30,  
12 too.

13 A. Okay.

14 Q. These are all some extended distances, the views. We  
15 see in the first one is 9.6 miles away. And, I believe  
16 the closest might be 3.2 miles. And, invariably, we're  
17 seeing simulations or impressions of turbines that  
18 would be within a vast landscape. Can you explain why  
19 it is? Is the intent to hide the true impact of these  
20 turbines?

21 A. No, that was certainly not my intent. Shall I  
22 elaborate?

23 Q. Please.

24 A. We, in general, doing the visual impact assessment, I'm

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1 focusing on areas that are public areas that have a  
2 fairly significant degree of use, at least in -- that  
3 would be the priority. And, also which have either  
4 some concern of or sensitivity in terms of their visual  
5 -- their value as a scenic resource from the point of

6 view, either documented -- documentation in local,  
7 regional, state plans. Expressions by user groups,  
8 that would include towns or particular user --  
9 representatives of user groups. And, so, I tend to  
10 focus on those areas.

11 And, we did end up getting specific  
12 requests from Public Counsel to look at some additional  
13 areas of interest, which included the Panorama Golf  
14 Course, which we did the Dummer Pond, which we did a  
15 lot more detailed analysis of, and Umbagog Lake. Those  
16 appeared to be the areas of concern. So, I think --

17 Q. Excuse me. I'm sorry. Were those also taken at  
18 three miles, four miles, five miles away?

19 A. Those are -- We took them from where the viewpoints  
20 occurred, yes. Or, we investigate, I mean, the  
21 pictures, the photographs that we took were taken from  
22 places -- from the places where the resource was.

23 Q. Can you just tell me what the distance was from the --

24 CHAIRMAN GETZ: Well, let's take this  
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[WITNESS: Vi ssering]

1 one step at a time. I understood the first question to be  
2 what -- essentially, what's your motivation for the  
3 photographs that the witness took? I think she was about  
4 to conclude what that motivation was. I think you're now  
5 onto another follow-up question about what other  
6 photographs could have been taken. So, let's let her  
7 finish with I assume to be the motivation for the  
8 photographs she took. And, if you want to do follow-up  
9 questions about other photographs that may or may not have  
10 been taken, and let's get to that after she finishes this

11 answer.

12 BY THE WITNESS:

13 A. Okay. So, the Panorama Golf Course is 2.6 miles. That  
14 particular vantage point was one of the most proximate  
15 viewing locations on the golf course. There are not  
16 too many places that occur in the region there are  
17 views that are significantly closer than that.

18 BY MS. LINOWES:

19 Q. Okay. Ms. Vi ssering, in this document, I'm looking at  
20 a photocopy of the original, so I'm not seeing the  
21 color images. Are the turbines actually shown in these  
22 views?

23 A. No, these were -- the purpose of this part of the  
24 report is documenting the visibility around the 15-mile  
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[WITNESS: Vi ssering]

1 radius study area that we conducted. So, it's to  
2 document viewpoints with -- pretty much all the  
3 viewpoints within that study area. We do -- We don't  
4 do simulations generally of every single viewpoint. We  
5 usually do simulations of ones that have been  
6 identified as being particularly sensitive or -- and  
7 also to represent a range of different distances and  
8 directions, in terms of looking at the project.

9 Q. Then, I assume that there are simulations in this  
10 package? I mean, you've supplied all the simulations?

11 A. Yes. I think we have --

12 Q. Could you point to where they are?

13 A. Yes, we have eight simulations, and those should have  
14 been in an appendix, I think it's Appendix --

15 MR. PATCH: It's Appendix (f), I  
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16 believe.

17 WITNESS VISSERING: Thank you.

18 BY THE WITNESS:

19 A. Actually, the eight simulations, I think initially we  
20 did six simulations, and then we supplemented with a  
21 simulation of the Panorama Golf Course and Lake  
22 Umbagog.

23 BY MS. LINOWES:

24 Q. Okay. Again, I don't have a very good view of what  
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1 these look like.

2 A. I do have the -- I do have the simulations in poster  
3 size here, if we need to refer to them.

4 Q. The distances that are showing here I have, for  
5 Appendix -- Viewpoint 16, I don't know if these are out  
6 of order, Viewpoint 16, 5.3 miles. And, then,  
7 Viewpoint 22a, is that correct, 2.6 miles?

8 A. Yes. That would be Millsfield Pond. That's certainly  
9 one of the closest viewpoints of the Project.

10 Q. Now, that standard that you're talking about, that some  
11 entities consider an area of high interest or high  
12 value, this is an area that is not highly populated,  
13 would you agree?

14 A. The region generally?

15 Q. Uh-huh.

16 A. Yes, I would say that's true.

17 Q. It's not -- It may or may not be a high tourist area?

18 A. I think that probably some people would think that  
19 tourism is a fairly major -- of major importance in the  
20 area, but it probably is less so than other areas of

21 New Hampshire, that's probably true.

22 Q. Is it possible that the views are considered quite  
23 important to people, but not necessarily documented by  
24 third parties?

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1 A. I think -- well, I should probably clarify. I mean,  
2 not all of these -- most of these views that we used as  
3 simulations were not necessarily "documented". They  
4 are ones that, using the criteria that I use for  
5 determining scenic quality, that I consider to have  
6 high scenic value. Others were documented. And, there  
7 were specific requests, such as Panorama Golf Course,  
8 because of its -- the high degree of use, and, to some  
9 extent, the certain historic and recreational value of  
10 that resource.

11 Q. So, you're applying your own subjective view of what  
12 you think a high value view would be?

13 A. I would argue that -- I wouldn't use the word  
14 "subjective". Aesthetics is -- I've spent my life  
15 addressing this, this issue, my professional life.  
16 There are, and this may be more of an answer than  
17 you're looking for, but there have been many, many  
18 studies that have been done in terms of preferences.  
19 There have been methodologies that have been developed,  
20 which -- which address scenic quality. And, scenic  
21 quality is something that can be -- it is pretty, I  
22 think, can be very systematically addressed and  
23 evaluated. And, it is based on a lot of studies of  
24 human preferences. That there are systems that the

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1 U.S. Forest Service uses, and they have been well  
2 established since the 1960s.

3 And, so, while there may be -- there may  
4 be different -- some people might not agree that  
5 Dixville Notch is a highly scenic area, I think most --  
6 most people would. And, the methodology that I use  
7 identifies the reasons for that, for that scenic  
8 quality.

9 Q. Ms. Vissering, am I to understand that, if two  
10 aesthetics experts were in the room, both would agree  
11 on this?

12 A. I'll tell you an interesting anecdote with that. I was  
13 involved in Vermont in developing the Quechee Analysis.  
14 And, the Environmental Board hired three landscape  
15 architects to help them figure out a way that this  
16 issue, this thorny issue, aesthetics, could be more  
17 equitably and systematically addressed. One of the  
18 things that they commented on was how amazed they were  
19 that all three landscape architects had exactly the  
20 same approach. And, some of those -- that approach  
21 was, excuse me, adopted into the evaluation system  
22 that's used in Vermont.

23 Q. If I'm not mistaken, with regard to the Vermont and the  
24 Quechee test, it applied to the Act 250, as well as the

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[WITNESS: Vi sseri ng]

1 Section 248 in reviewing wind energy projects, correct?

2 A. Yes. But it's very -- the methodology that is -- is  
3 almost identical. Similar methodologies have been used

4 by the U. S. Forest Service, by the Bureau of Land  
5 Management, in nearly every -- New York uses a similar  
6 methodology, Maine uses a similar methodology, nearly  
7 every scenic evaluation approach throughout the country  
8 is very similar.

9 Q. And, Ms. Vissering, the point I was -- the question I  
10 was going to ask you is the fact that it is very high  
11 tied to public areas. It has little to no effect or  
12 relevance to those people that will be living within  
13 the vicinity of these turbines, is that correct?

14 A. I would -- I would not say that. I did -- You will  
15 note that I did say that it is not practical for me to  
16 go onto every public property, every private -- I mean,  
17 every private property and look at everybody's  
18 individual views, clearly. But those are the views  
19 that we see from public roads, from public recreation  
20 areas, tend to be the same, same or similar views,  
21 perhaps seen from a slightly different vantage point  
22 from most private property owners. And, it isn't to  
23 say that those views from private property owners  
24 aren't important. But I cannot, as I said, evaluate

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1 every single one of those properties. And, the public  
2 landscape provides a sense of those parts of the  
3 landscape, which are experienced by a large number of  
4 people and which have often some degree of public  
5 investment.

6 Q. Ms. Vissering, --

7 A. And, that's part of the reason that they're important.  
8 And, I also believe that there is, in most processes,

9 opportunities for private individuals to -- people who  
10 do have concerns, to participate in the process.

11 Q. Ms. Vissering, I believe that, because you're focus is  
12 on public roadways and access points, that this is why  
13 you get into the question of how long the turbines are  
14 visible from any point, as in one is driving by the  
15 turbine versus living with the turbines?

16 A. Duration of view is one of the considerations that is  
17 -- that I would look at in terms of evaluating the  
18 impacts.

19 Q. So, if someone was stationery or someone was hiking in  
20 the woods, and on a trail perhaps, and in close  
21 proximity, or seeing these turbines all the time, would  
22 the aesthetics -- would you re-evaluate the aesthetics  
23 on these turbines and the location?

24 A. I believe I said in here, at least I usually do in most  
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1 visual assessments, that, for an individual property  
2 owner, who does have a view of the project, clearly,  
3 there is a long duration of view, and it is a  
4 consideration, certainly. That some individuals may  
5 have a view that is of very long duration, in the sense  
6 that, depending on where -- from where in this, in  
7 their home or property they may see the project.

8 Q. That's a less -- That's not the standard on which you  
9 determine adverse aesthetic impact or non-adverse?

10 A. No. I usually do look at the -- primarily at the  
11 public views. There have been cases where I have been  
12 involved that -- where I have found a wind energy  
13 project not, in my opinion, not to be appropriate.

14 But, even there, it's usually based on the public, the  
15 impacts to the public from roadways, from parks,  
16 recreation areas.

17 Q. Isn't it true, if I may, one project in the State of  
18 Vermont, where a number of houses were under a quarter  
19 mile from the turbines, and those were not factored in  
20 at all in your evaluation of adverse impacts, 40 homes,  
21 I believe?

22 A. Forty homes within a quarter mile in Vermont?

23 Q. Within a half mile to a quarter mile.

24 A. Where was that?

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1 Q. Deerfi el d.

2 A. I don't remember any homes, except there was one home  
3 within a half mile, that was the closest home, and the  
4 rest were within three miles of the project, or the  
5 rest of the 30, the 30 homes that I referred to were  
6 within three miles. And, most of those would not have  
7 had views of the project.

8 Q. Would not what?

9 A. Would not have seen the project.

10 MS. LINOWES: All right. No more  
11 questi ons. Thank you.

12 CHAIRMAN GETZ: Dr. Publi cover?

13 DR. PUBLI COVER: No questi ons.

14 CHAIRMAN GETZ: Mr. Mul hol l and?

15 MR. MULHOLLAND: No, Mr. Chai rman.

16 Thank you.

17 CHAIRMAN GETZ: Mr. Roth?

18 MR. ROTH: Yes, I have a few.

19 BY MR. ROTH:

20 Q. I noticed from your testimony that you were one of the  
21 contributing authors to the "Environmental Impacts of  
22 Wind-Energy Projects"?

23 A. Is that the National Academy's document that you're  
24 referring to?

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1 Q. Yes.

2 A. Yes.

3 Q. Do you consider that document to be an important and  
4 well-researched, valuable source of information about  
5 the environmental impacts of wind energy projects?

6 A. Well, I hope so.

7 Q. Okay. Turning your attention to the analysis that you  
8 did of Lake Umbagog, the views from -- of Project from  
9 Lake Umbagog. I just want to get you to confirm that,  
10 from certain parts of Lake Umbagog, the turbines will  
11 be visible in the daytime?

12 A. Yes.

13 Q. In the daytime, correct?

14 A. Yes.

15 Q. And, in certain portions of Lake Umbagog, the turbines  
16 will be visible at nighttime because of lighting,  
17 correct?

18 A. I do want to clarify that, because the answer -- the  
19 answer is "yes". At that distance, it will be  
20 extremely difficult to see those lights.

21 Q. Okay.

22 A. They will be visible, but you would have to be -- you  
23 would have to be really looking for them.

24 Q. Okay. Do you know how many people use the portion of  
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1 Lake Umbagog that from where these will be visible?

2 A. I don't know.

3 Q. Okay. You did some analysis of the visual impact, I  
4 guess at my suggestion, of the turbines from the  
5 Panorama Golf Course. How many people will see the  
6 turbines from Panorama Golf Course?

7 A. The use data that we got from the Panorama Golf Course  
8 was close to -- I think it was an annual count last  
9 year, I think close to 9,000 people. So, that's a lot  
10 of people.

11 Q. That's a lot of people.

12 A. And, they will be seeing -- they certainly will be  
13 seeing the turbines.

14 Q. Okay. And, which ones will they see?

15 A. The Dixville Peak turbines.

16 Q. How many of them are there?

17 A. Seven.

18 Q. And, if you were -- what kind of a view of it? If  
19 you're standing, I don't know, what would be a vantage  
20 point? Like, is there a particular hole at the  
21 Panorama from which you could stand and see them?

22 A. The point from which we did the simulation, there's a  
23 lower golf course, where you may be able to see a few  
24 tops of the -- and that tends to be down just south of

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1 the Balsams, you might be able to see the tops of some  
2 turbines. But they're certainly not going to be a very

3 dominant feature from there. Then, this little hole  
4 where I took this, there's the parking lot that --  
5 there's a big parking lot, and on the south, think of  
6 my directions here, I think it's the south side of that  
7 parking lot is where this was taken. And, that's  
8 probably the most prominent hole right there.

9 Q. Okay.

10 A. Then, you walk up to the clubhouse. And, a lot of --  
11 the other greens are kind of -- tend to be more on the  
12 north and to the west side of, and tend to be lower,  
13 and they're very much spread around, and the views  
14 there are pretty much 360-degree views. So, you're  
15 looking in all -- if one was playing golf, one would be  
16 looking at, or cross-country skiing on that golf  
17 course, you would probably be facing in many different  
18 directions as you were playing the game. And, the  
19 restaurant is, that's in the clubhouse, is oriented to  
20 the north. So, it is -- it's really the parking lot  
21 and the entrance to the building that is on the --  
22 facing the Dixville Peak area.

23 Q. Okay. So, from the restaurant and the clubhouse, you  
24 won't be able to see them?

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1 A. From the restaurant, you would not be able to see them.  
2 The club -- I'm not sure exactly which is the clubhouse  
3 portion of the building. I know that the restaurant is  
4 oriented toward the west, and I'm not sure about the  
5 clubhouse. But I know that the windows are generally  
6 not oriented in that direction on the building.

7 Q. Okay. From the point that you said had the greatest --

- 8 had the most impressive view of the turbines, how big  
9 would they seem to you?
- 10 A. I think that's, being a visual person, it's probably  
11 easier to -- should we look at the --
- 12 Q. But I'd like to hear you describe it.
- 13 A. You just want me to describe it.
- 14 Q. Yes.
- 15 A. Okay. When I look at, and this is part of how I would  
16 evaluate some of these impacts, I would look at the  
17 size of those turbines in relationship to the size of  
18 the mountain. And, they, even though we're 2.6 miles  
19 away, is it 2.6? Just double check here. 2.7, they --  
20 the turbines themselves, they will certainly be  
21 noticeable. But they will, in proportion to the  
22 mountain itself and the surrounding views, they're  
23 going to appear fairly small. Another factor is that  
24 some of the foreground trees are going to appear

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- 1 visually to be taller or higher than the turbines  
2 themselves, which also tends to sort of diminish their  
3 prominence.
- 4 Q. So, would you describe them from that -- from the  
5 vantage point that you suggested they would be most  
6 visible as "very prominent"? "Prominent"?
- 7 A. I would certainly not describe them as "very prominent"  
8 by any means.
- 9 Q. Okay.
- 10 A. I think they're going to be -- they are going to be  
11 certainly noticeable, but I don't think they're going  
12 to be prominent. And, if I --

- 13 Q. And, for --
- 14 A. I'm sorry, I don't mean to interrupt.
- 15 Q. No, that's okay.
- 16 A. When I think of "prominent", it would be something that
- 17 is -- would be seen and almost as a very strong focal
- 18 point. In other words, something that really draws
- 19 your eye. And, they will certainly draw your eye.
- 20 But, if you think about that place there, the views to
- 21 the west are very dramatic. The views to the north are
- 22 quite dramatic. To the east, you're looking at the
- 23 Balsams Hotel. It's a very complex landscape. And,
- 24 one of things that enhances prominence is when this is

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- 1 all -- this is really the only thing that you are
- 2 seeing, and it's located on something that -- a land
- 3 form that is also drawing your eye for a particular
- 4 reason. The Dixville Peak, at this location, is not a
- 5 particularly dramatic land form. It's a nice mountain,
- 6 but there's nothing distinctive about its shape, its
- 7 vegetative patterns. Whereas --
- 8 Q. Compared to what?
- 9 A. Compared to the Dixville Notch. You're looking down
- 10 there at these sharp cliffs.
- 11 Q. So, if -- yes.
- 12 A. The Balsams. Even, you know, as you look to the north
- 13 and west, that pattern of open meadows and hill and
- 14 forest that you see there, is really -- is a compelling
- 15 view.
- 16 Q. So, from the place on the golf course, you can say,
- 17 while you're practicing your swing, you can look and

18 see the turbines in one view and the Notch in another?

19 A. You would be, yes, you would be turning your head 90  
20 degrees, but, yes.

21 Q. Okay. Is it likely to interrupt the golfer's swing?

22 [Laughter]

23 BY THE WITNESS:

24 A. Oh, well, now we're getting down to the really

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1 important issue.

2 MR. IACOPI NO: A good gol fer keeps hi s  
3 eye on the ball .

4 MR. PATCH: I suppose I shoul d object to  
5 that, Mr. Chair man, but I won' t.

6 WITNESS VI SSERI NG: I have to admit that  
7 I do not have experi ence in thi s, enough experi ence  
8 playi ng gol f.

9 CHAIRMAN GETZ: Well , any good gol fer  
10 woul d say "Any excuse wi ll do. "

11 [Laughter]

12 CHAIRMAN GETZ: Pl ease proceed,

13 Mr. Roth.

14 BY MR. ROTH:

15 Q. Now, if you were to drive, say, from Errol , through --  
16 past the Balsams and through the Notch, how much woul d  
17 you see the turbines on that drive?

18 A. Really, you see them, heading north from Errol , you  
19 start to see them ki nd of intermi ttently as you're  
20 dri vi ng. And, that other simulati on that we did at  
21 Signal Mountai n Road, --

22 Q. Uh-huh.

23 A. -- is really pretty much the end, which is quite a ways  
24 from the Notch. It starts to narrow -- the road starts  
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1 to narrow down, and pretty soon after that viewpoint,  
2 that's kind of the open meadows are one of things that  
3 contribute to the scenic quality of that viewpoint,  
4 where we did the scenic -- where we did that  
5 simulation, it was why we did the simulation there.  
6 And, then, it starts to narrow down. So, the angle of  
7 view is such that you will quickly lose the view of the  
8 turbines. And, so, it's a number of miles up to the  
9 Notch, and then you wouldn't see -- well, you wouldn't  
10 see it again if you're heading east.

11 Q. Okay. All right. Now, you had mentioned, in response  
12 to some of the questions made by Ms. Linowes,  
13 concerning I think it was that view -- no, that was  
14 actually -- I take that back. In one of your responses  
15 to one of the data requests that I gave to you, if I  
16 can get it out of here, I'm going to show this to you,  
17 if I may. This is 4-45. Would you read the  
18 highlighted portion there for us please.

19 A. Okay. This is the Question PC 4-45. "Please state  
20 whether, in general, you think wind turbines are  
21 attractive or appealing." And, the answer I gave was  
22 "I find them in general to be visually appealing and  
23 there appears to be evidence this is true of many  
24 people. However, even the most attractive object is  
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1 not suited for every location. I find many barn silos  
2 attractive generally, but I do not believe they are  
3 appropriately located on ridgelines, for example."

4 Q. Okay. Thank you.

5 MR. IACOPI NO: And, just for the record,  
6 that's contained in Petitioner's Exhibit 21.4.

7 MR. PATCH: And, just to note for the  
8 record, that was only half the answer that she read.

9 MR. ROTH: I don't know if that was half  
10 or more than half, but that was the highlighted portion I  
11 asked her to read.

12 MR. PATCH: Okay.

13 BY MR. ROTH:

14 Q. In your occupation, is personal bias sort of an  
15 occupational hazard?

16 A. I think that it -- Well, I think that's a very good  
17 question. I believe, as I said earlier, that there are  
18 some very sound methodologies and systematic approaches  
19 for evaluating landscapes. It is something that I have  
20 spent much of my life addressing professionally, and it  
21 is partly because I love landscapes. I find landscapes  
22 generally to be fascinating and it interests me a great  
23 deal as to why people find certain landscapes  
24 attractive and others not. And, I believe that there

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1 are some real answers to that, those questions. And,  
2 so, what I feel strongly about, with regard to this,  
3 the issue of wind turbines, is generally --

4 Q. I'd actually prefer that you just answer the question.

5 A. Okay. Okay.

6 Q. Is personal bias an occupational hazard?

7 A. No.

8 MR. PATCH: I think, Mr. Chairman, she  
9 was trying to answer the question. I don't know --

10 MR. ROTH: It's either a "yes" or "no"  
11 answer, and --

12 BY THE WITNESS:

13 A. Well, I don't --

14 MR. PATCH: Yes, but she can explain  
15 herself.

16 CHAIRMAN GETZ: One at a time. I think  
17 the -- let's get the direct answer, and then the  
18 opportunity for the explanation, which I think she was  
19 quite a ways into. But, if we can get the direct answer,  
20 and then complete your explanation please.

21 WITNESS VISSERING: Okay.

22 BY THE WITNESS:

23 A. My short answer would be "no". And, the reason is  
24 because the issue is not whether wind turbines are

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1 attractive or not. The issue is whether you are  
2 impacting resources of significance, and those  
3 resources have to do with the landscape, not the  
4 turbines, in the landscape in which the turbines are  
5 being located.

6 BY MR. ROTH:

7 Q. Okay.

8 A. And, the characteristics of the project. So, there's  
9 the characteristic of the landscape and the  
10 characteristic of the project. And, the project may be

11 its relative scale, it's the visibility of other  
12 project infrastructure, those kinds of things. But the  
13 characteristics of the landscape can be identified, and  
14 those are the relevant factors, not whether or not I  
15 find them attractive or not.

16 Q. So, do you think -- I mean, you stated in this response  
17 that you "didn't believe barn silos are appropriately  
18 located on ridgelines". And, would that mean that you  
19 would make -- if, for example, the project was not  
20 about wind turbines, but was about barn silos, would  
21 you have a different view about whether their  
22 visibility in the various locations was appropriate,  
23 according to the standards of your profession?

24 A. Barn silos have, you know, a very different function

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1 and purpose. And, they are associated with farmland.  
2 Now, if you -- if there were a farm on top of a  
3 ridgeline, and I suppose, in New York State, we do see  
4 it on small ridgelines, and that could be appropriate.  
5 On a forested, rugged ridgeline, that's not a building  
6 form that would be appropriate, in general. I mean,  
7 not -- I mean, it could be that there could be some  
8 situation where it might be appropriate. But it's an  
9 example -- it's an issue of much of the reason we find  
10 certain things -- certain uses appropriate is there  
11 direct and logical connection with a resource use.

12 Q. Okay. So, a 400 foot tall steel structure, on a rural  
13 mountain forested hillside or a mountainside, that has  
14 a logical relationship to a forested mountain, is that  
15 what you're saying?

- 16 A. If it's generating wind. One of the things that has  
17 been demonstrated is that people tend to find them  
18 attractive when they are moving, because -- and the  
19 presumption is because you are seeing the connection  
20 between the function of this element and its location.  
21 Q. Now, you mentioned, and that brings up a point, I think  
22 that's an interesting one, you said in your response to  
23 the data request, that "there appears to be evidence",  
24 that your preference, you know, your belief that  
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- 1 they're visually appealing, that there's evidence that  
2 this is true for many people. Is there any study that  
3 you have submitted as part of the record that  
4 establishes that?  
5 A. No, but there -- well, there have been studies, and I  
6 think I cited a study that -- about the people finding  
7 them attractive when they're moving, and people finding  
8 them not attractive when they are standing still.  
9 Q. So, during the periods of time when they're not moving,  
10 people are going to go "ugh"?  
11 A. They are -- I think that the issue has been generally,  
12 if they are standing still over the long period of  
13 time.  
14 Q. Uh-huh.  
15 A. In other words, they have broken down.  
16 Q. Okay. Or, the wind's not blowing.  
17 A. Well, the wind may not be blowing for short periods of  
18 time, that is conceivable, yes. But -- And, they may  
19 not be regarded as quite as beautiful when they're  
20 sitting still as when they're moving.

21 Q. Okay. Do you have a large display of VP 16? That's  
22 the Signal Mountain view.

23 A. The simulation?

24 Q. Yes. Thought there was a simulation or it was a --  
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1 A. Which --

2 Q. There was a poster display at the October 2nd public  
3 meeting, which I believe was the Signal Mountain view.  
4 Do you have that with you? Were you present at that --

5 A. Yes, I was there.

6 Q. Okay.

7 A. Would you like me to put that up?

8 Q. Sure. That would be nice. Do you remember the  
9 reaction of the woman who said that was her house?

10 A. I do remember that.

11 Q. How did you feel about that?

12 A. I understand that, that reaction. I have friends that  
13 have had this, the same kind of concern about their own  
14 properties. And, I sympathize with it. I think it's  
15 -- I think it's a legitimate reaction.

16 Q. And, she was crying, I think, wasn't she?

17 A. She was.

18 Q. Yes. She was very upset. Do you know if the Project  
19 has done anything to provide her mitigation from the  
20 visual impact that she has?

21 A. We talked about that. Mr. Decker went and spent some  
22 time with her, that's my understanding. I probably  
23 should be careful about what I say, because I was not  
24 there myself. But I spoke with Mr. Decker about it,

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1 and he told me that he had vi si ted her and talked wi th  
2 her.

3 Q. Okay. Now, for --

4 MR. ROTH: I thi nk there are members of  
5 the Commi ttee who were not present at that meeting,  
6 because they weren' t members of the Commi ttee at the time,  
7 is that correct? Just one?

8 CHAIRMAN GETZ: I thi nk Mr. Northrop is  
9 --

10 MR. ROTH: The onl y one?

11 CHAIRMAN GETZ: -- the only one.

12 MR. ROTH: Okay.

13 BY MR. ROTH:

14 Q. For the benefi t of Mr. Northrop, and to remi nd all of  
15 us, the next day we went on a drive-around to look at  
16 the si te. Can you descri be the weather condi ti ons that  
17 day?

18 A. Yes. Pretty dreadful. It was very di ffi cul t to see  
19 some of the roads, and some close -- we could see some  
20 of the si tes, some of the turbi nes -- we were close  
21 enough to be able to see some of the turbi ne si tes, but  
22 more from ki nd of a forest loggi ng road, not typi cal  
23 publ i c vi ewpoi nts.

24 Q. Do you thi nk it would be i mportant for thi s Commi ttee  
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1 to get actual ly a decent vi ew of the si te?

2 A. I do.

3 Q. Of the ri dgel i nes? You do?

4 A. Yes.

5 MR. ROTH: Thank you. That's all.

6 CHAIRMAN GETZ: Okay. Questions from  
7 the Subcommittee?

8 MR. NORTHROP: Just a very quick  
9 question.

10 BY MR. NORTHROP:

11 Q. I didn't see in here, and maybe I'm missing something,  
12 but do you have any simulations of the Fishbrook wind  
13 turbine string?

14 A. Fishbrook is very difficult to see from just about  
15 anywhere. And, the one, actually, the one viewpoint  
16 that I can think of, I'm trying to remember if it's in  
17 -- is Phillips Pond, but I think that one was oriented  
18 towards the Kelsey/Owl head ridge, and -- if I recall.  
19 And, we didn't include the Fishbrook, the Fishbrook  
20 ridge. But it is the only two -- the only places I can  
21 think of where you would see Fishbrook, and it's really  
22 just the very southern end, would be from Dummer Pond,  
23 and you would really be only seeing a few of the  
24 turbines. And, then, there's this little tiny little

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1 glimpse at Pontook Reservoir along Route 16. So,  
2 because of the limited visibility, and because that  
3 even in the viewpoints where it can be seen, only a few  
4 turbines are visible, we chose not to do any  
5 simulations of that.

6 Q. So, they're not in Appendix 11 --

7 A. No.

8 Q. -- or Appendix (f), Tab 11?

9 A. No.

10 MR. NORTHRUP: Okay. Thank you.

11 CHAIRMAN GETZ: Other -- Mr. Harrington.

12 BY MR. HARRINGTON:

13 Q. Maybe you could help me, this is your supplemental  
14 testimony, you said you did a photo simulation of Lake  
15 Umbagog, and there's, in fact, a picture included in  
16 55d, and it says "Viewpoint 19 Lake Umbagog". It says  
17 in the testimony it's a "simulation". Looking at the  
18 picture, maybe my eyes aren't good enough, I can't even  
19 make out the faintest hint of simulated turbines. Are  
20 they supposed to be there on that picture?

21 A. Yes, but let me see if I can get that one out.

22 MR. PATCH: Mr. Chairman, could I just  
23 clarify one thing? I think it's a different place in the  
24 record. I think the response to PC 2-46, which is  
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[WITNESS: Vi ssering]

1 Petitioner's Exhibit 21.4, has the viewpoint 19 in it. So  
2 -- which has the photo simulation on it. So, there may be  
3 -- is it in both places?

4 MR. HARRINGTON: In the supplemental  
5 testimony, it says, in response to a data request from  
6 Public Counsel, PC 2-46, you prepared a photo simulation  
7 of Lake Umbagog, which is included as Appendix 55d,  
8 Supplement to the Application.

9 MR. PATCH: Okay. It's in both places,  
10 I guess. I apologize.

11 MR. HARRINGTON: In fact, when you go to  
12 55d, there is a picture from Lake Umbagog. But I can't  
13 detect any turbines on there whatsoever. That's what I'm  
14 -- so, I'm wondering if they're not there or I simply just

15 can't see them.

16 WITNESS VISSERING: Okay. You're  
17 probably going to have to -- would it be helpful to --

18 CHAIRMAN GETZ: Well, why don't we hand  
19 it to the --

20 WITNESS VISSERING: -- pass it around?

21 CHAIRMAN GETZ: Please.

22 BY THE WITNESS:

23 A. They're very, from that -- I should stay near the  
24 microphone -- from that vantage point, they are -- it's

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1 very hard to do simulations beyond 10 miles, because  
2 the turbines appear so small that, in fact, at that  
3 distance, you don't -- you wouldn't even see the blades  
4 of the turbines. You can't, because they're thin  
5 enough, you just can't -- your eyes can't make them  
6 out. So, they're very -- they're difficult to do and  
7 extremely difficult to, unless you have a very good  
8 printing process, to get the turbines to come out well.

9 BY MR. HARRINGTON:

10 Q. Okay. And, I notice from the map, this was taken  
11 basically on the Maine border, in the northeastern part  
12 of the lake, the picture?

13 A. That's correct.

14 Q. And, was that selected because it's one of the few  
15 places from the lake that you could actually see the  
16 turbines at all, if you had really good eyesight?

17 A. That northern part of the lake is -- probably the  
18 northern third of the lake, there are a number of  
19 vantage points within that portion of the lake where

20 you would be able to see, in some places, just  
21 Dixville, and in some places just the Kelsey ridge, and  
22 some places both. But that was far enough out where  
23 you got a broader view of both ridges. So, that's why  
24 we used that particular photograph.

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1 Q. So, from the majority of the lake, specifically the  
2 southern part, where the Wildlife Refuge and the State  
3 Park is, and the various remote campsites, those would  
4 not be able to see them at all?  
5 A. That's right, where the State Park is. There are some,  
6 I think four, four or five remote campsites that are in  
7 that northern part, --  
8 Q. Uh-huh.  
9 A. -- but they are beyond 15 miles away. So, they're --  
10 because they're in the very eastern portion of that  
11 bay.  
12 Q. And, going to the western portion of the lake, to the  
13 headwaters of the river, would you be able to see it  
14 from the opposite shore?  
15 A. I'm sorry, could you repeat that question.  
16 Q. Well, this is on the extreme eastern shore, you're  
17 practically into Maine here where this viewpoint was  
18 taken. If you went across to the headwaters of the  
19 Androscoggin, which is almost due east from this  
20 location, would you be able to see them from that area  
21 there?  
22 A. You would, but it's a much more narrow view. So, in  
23 other words, you're seeing just a little piece of  
24 Dixville, or depending on which way you're oriented,

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1 and because of the trees and foreground ridges.

2 MR. HARRINGTON: All right. Thank you.

3 CHAIRMAN GETZ: Mr. Janelle.

4 BY MR. JANELLE:

5 Q. You mentioned that you found wind projects that were  
6 inappropriate, were inappropriate from a view  
7 standpoint. Can you give us some characteristics of  
8 what an inappropriate -- inappropriate project would  
9 be?

10 A. Yes. There have been three projects that I've been  
11 involved with in different capacities that I thought  
12 were inappropriate, and all them for different reasons.  
13 And, each of them having to do with different site  
14 characteristics. But one of them was the proposed  
15 Black Nubble -- Redington Black Nubble Project. And,  
16 the reason for that was that it was immediately  
17 adjacent to the Appalachian Trail. And, this happened  
18 to be a section of the Trail which extended for one of  
19 the most remote and spectacular sections of Trail that  
20 extends for about 30 miles over which you would have  
21 views across this long, extended, high, completely open  
22 rocky summits. I mean, these were dramatic views.  
23 And, it would be seen -- it was in that roughly  
24 30 miles, this was actually 50 miles, but 30 at closer

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1 range, you would be seeing it at distances ranging from  
2 half a mile to four to five miles away over the next

3 adjacent ridgelines, with a lot of protected land in  
4 between. So, and the Appalachian Trail, as you know,  
5 it's not just a local resource, it's a National Scenic  
6 Park and Trail, National Scenic Trail, which is part of  
7 the reason for its value is that it is a footpath in  
8 the wilderness. It's very deliberately, I mean, there  
9 is documentation that the purpose of being here is to  
10 be -- have an experience of being in a remote  
11 landscape. It's a single track trail, it's not a  
12 snowmobile trail. And, it is -- was specifically noted  
13 in several places in the Land Use Regulatory  
14 Commission's Comprehensive Plan for the Unincorporated  
15 Territories. So, there was documentation, high scenic  
16 value, long duration of view. So, you know, you could  
17 see that it was not just one factor, it was many  
18 factors that led me to make -- draw that conclusion.

19 Another one, which was a completely  
20 different setting, which was a wind project that a lot  
21 people thought initially would make a lot of sense,  
22 because it was on a ski area, the Green Mountain  
23 Project. And, the reason that I came to the conclusion  
24 there is just geography of that area. For the Town of

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1 Londonderry, there are three mountains in that part of  
2 southern Vermont, which are just by themselves. And,  
3 so, if you lived in the Town of Londonderry, this is  
4 the only mountain you see. You don't -- It's not one  
5 of many different mountains. It is the focal point  
6 throughout the Town. And, because of the numerous open  
7 meadows in that town, it's seen from all over the

8 place. It was also seen at very close range from a  
9 State Park, which was restricted to no motorized  
10 vehicles. So, you had kind of that sort of experience,  
11 where you are expected -- you have an experienced  
12 level, an expected experience level.

13 So, and then the third project was one  
14 in which I didn't get hired, because I didn't agree  
15 with the people who wanted to hire me in New York, that  
16 I didn't -- I felt the project was too large. It was  
17 not an inappropriate site, but there were too many  
18 turbines. And, there were situations where individual  
19 homes, people living in homes, would have been  
20 surrounded, completely surrounded by turbines. And,  
21 so, I said, you know, "I can't completely oppose this",  
22 and the group that wanted to -- that was going to hire  
23 me wanted to completely oppose it. So, I didn't get  
24 hired. But, interestingly, it sounds like they, I

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1 guess the equivalent of the PUC in New York, coming to  
2 the same conclusion I did. So, we'll see. That hasn't  
3 been decided yet.

4 MR. JANELLE: Thank you.

5 WITNESS VI SSERING: So, just a couple of  
6 examples.

7 CHAIRMAN GETZ: Dr. Kent.

8 DR. KENT: Thank you.

9 BY DR. KENT:

10 Q. The pictures we're looking at, do you use a camera that  
11 replicates the eye?

12 A. Yes. I am now using a digital camera. And, with a

13 film camera, one is supposed to use a 50 millimeter  
14 lens, which most closely represents the way the eye  
15 sees the focal length -- I mean, angle of view. And,  
16 with the digital cameras, it's 34. You set it on a  
17 focal length of 34. And, that's the equivalent of 50  
18 on a film camera.

19 Q. Thank you. Is your assessment limited to visibility or  
20 were you also assessing potential people's reactions to  
21 the towers?

22 A. What do you mean by "people's reactions"? I mean, I  
23 was doing a visual impact assessment, which is, I mean,  
24 I -- the approach that I use, it's really an aesthetic

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1 impact assessment, because what -- aesthetics is  
2 perception through all of the senses. But I don't get  
3 into the noise issues from a technical point of view.  
4 And, there didn't seem to be any particular issues with  
5 this particular case. But it's more the perception,  
6 public perception that I'm looking at. I don't know if  
7 that answers your question.

8 Q. Well, not completely. So, let me parse this for you  
9 then. First step is "visibility", can we see the  
10 towers?

11 A. Exactly.

12 Q. And, then, you are attempting, in some manner, through  
13 a surrogate, to determine what people might -- their  
14 response might be to the view?

15 A. Okay. So, the visibility is "can it be seen?" "Would  
16 it be seen or not?" And, then, the next step that I  
17 would look at would be -- would be "in what context is

18 it seen?" Because how you experience them, you know,  
19 depending on how they are seen driving along, paddling  
20 a boat, hiking a trail, whatever it is, it's how those  
21 would be experienced in the landscape, both in terms of  
22 their -- the visual attributes of the landscape itself.  
23 Is this a particular scenic -- scenically significant  
24 landscape? Are you going to be seeing this from over a  
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1 Long period of time, where you're expecting to be in a  
2 highly natural environment? Those kinds of -- those  
3 kinds of issues. Those are all identified in the  
4 report.

5 I do also respond to, I mean, there  
6 clearly are documented resources and viewpoints that  
7 are documented either in maps online, through the State  
8 agencies, through local town documents, and in the  
9 hearings that come up as places that people seem to be  
10 -- to value. So, that would be the other step, is  
11 "what are the places that people care about?"

12 Q. Are there -- Is this tied in some way to psychological  
13 or scientific studies, that people will appreciate a  
14 particular set of landscape elements and not appreciate  
15 another set of landscape elements that you might have  
16 them put towers in?

17 A. Yes. There was a tremendous amount of research on that  
18 very topic that was done in sort of '70s and '80s, in  
19 response to, because the Forest Service/Bureau of Land  
20 Management were trying to develop, because of concerns  
21 especially about visual impacts of forest practices or  
22 building transmission lines and highways, there was a

23 lot of interest in trying to find some ways that these  
24 things could be looked at a little bit more, at least  
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1 systematically, if not objectively. So, there were a  
2 lot of studies that occurred. There are volumes of  
3 these studies that were conducted looking at how people  
4 perceive landscapes. What kinds of landscapes do they  
5 prefer? What kind of landscapes they find to be  
6 unappealing, and why? What are the elements? So, yes,  
7 there was a lot of psychological studies that were  
8 done, have been done, in response -- with the attempt  
9 to try to get some more useful way to address that  
10 issue of aesthetics and landscape.

11 Q. Thank you. And, in your professional career, have you  
12 observed windparks that had a negative impact on  
13 people? For example, demonstrated decreases in  
14 tourism, because of the way they were constructed or  
15 the placement of them?

16 A. I do not know of any evidence that that has occurred.  
17 That isn't to say that it has or has not. But I know  
18 that I've reviewed what data seems to be out there, in  
19 terms of in relation to wind energy projects and  
20 tourism. And, I have not seen any evidence that there  
21 has been a negative impact. I do know, for example, --

22 MS. LINOWES: Mr. Chairman, I would like  
23 to object to this questioning. Unless she's qualified as  
24 a tourist expert, and has actually done the study, that  
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1 making the statement is highly subjective --

2 CHAIRMAN GETZ: Well, let's step back.  
3 You're objecting to Dr. Kent's questions or you're  
4 objecting to her --

5 MS. LINOWES: The assertion that, from  
6 what she's seen, there has been no negative impact on  
7 tourism. I think that she's going well beyond her  
8 expertise at this point, and hasn't acknowledged to what  
9 extent she's done any studies.

10 MR. PATCH: Mr. Chairman, --

11 CHAIRMAN GETZ: Well, I'm going to  
12 overrule the objection. I think the witness is giving her  
13 personal and professional experience with respect to the  
14 question. If you want to take some position in closing  
15 argument or in your brief about the extent of her  
16 expertise, then you have the opportunity to do that. But  
17 I'm going to permit the question and the answer.

18 BY THE WITNESS:

19 A. Okay. With regard to tourism, I know -- I have  
20 personally experienced places where wind energy  
21 projects exist that seem to be taking advantage of them  
22 from a tourism point of view. For example, I can think  
23 of three examples: One is in Vermont, the Molly Stark  
24 State Park. John Stark ought to be very familiar to

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1 you folks in New Hampshire. His wife, this is a scenic  
2 byway, and there are little information areas scattered  
3 along the highway that give you local features. And,  
4 the Searsburg Wind Project is one those features that  
5 is in one of the places where you have a view of that  
6 project. When I was in Fenner I, the Fenner and

7 Madison Projects in New York, they put those up on  
8 their websites as potential tourist sites for people to  
9 visit. At the recent Lempster Project, I was visiting  
10 that, and the local little store there is selling T  
11 shirts with wind turbines on them. And, apparently,  
12 people are stopping and taking pictures along the  
13 roadside there. So, those -- And, I've certainly seen  
14 lots of people stopping at the Searsburg Project and  
15 taking pictures. There's a little pull-out there for  
16 people to do that.

17 So, my personal experience, this is  
18 probably in the course of conducting my professional  
19 work, has -- seems to indicate that there are some  
20 potential benefits from a tourism point of view.

21 BY DR. KENT:

22 Q. All right. Let me -- again, my question was actually  
23 about, professionally, are you familiar with any  
24 studies that have demonstrated a negative impact on

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1 tourism? And, my follow-up would have been the  
2 inverse, was there a positive effect? Are you familiar  
3 with any published studies that indicate some effect on  
4 wind towers?

5 A. Not published studies, no.

6 DR. KENT: Okay. Thank you.

7 CHAIRMAN GETZ: Mr. Iacopino.

8 MR. IACOPI NO: I have just one -- well,  
9 one line of questioning.

10 BY MR. IACOPI NO:

11 Q. I'm going to put up -- I saw it here. Mr. Decker and

- 12 Mr. Lyons had a chart up, showing the strings. Well,  
13 actually, let me just show you --
- 14 A. It might be behind that one, behind the -- oh, no, it's  
15 not.
- 16 Q. No, those are both visual impacts. But this one can  
17 show it, too. But we heard testimony this morning  
18 about this interconnection line coming down from the  
19 southernmost turbine in Fishbrook, down to the  
20 substation. And, as I understand your testimony, you  
21 were actually commissioned to also determine this 115  
22 kV line, what visual impact there was of that from  
23 Dummer Pond?
- 24 A. What I was looking at is that this is the 115  
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- 1 interconnection line from the switchyard, down to think  
2 this point here. And, what I was looking at is these  
3 H-frame structures and their visibility from Dummer  
4 Pond.
- 5 Q. What about the collection lines that come down to the  
6 substation? Are they, in any way, do they impact the  
7 visual site from Dummer Pond, if you know?
- 8 A. I don't believe they will, because of the angle at  
9 which they're going to be coming down off that  
10 ridgeline. I mean, that's something that I thought  
11 about as I was looking at this and the potential  
12 impact. But, looking at the way that is organized into  
13 the terrain, that would be my --
- 14 Q. So, you believe the terrain would prohibit adverse  
15 impacts of those lines from Dummer Pond?
- 16 A. Yes.

17 MR. IACOPI NO: Thank you. I have no  
18 other questions.

19 CHAIRMAN GETZ: Any other questions from  
20 the Subcommittee?

21 (No verbal response)

22 CHAIRMAN GETZ: Redirect, Mr. Patch?

23 MR. PATCH: Yes, just a few questions.

24 Thank you, Mr. Chairman.

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1 REDI RECT EXAMI NATION

2 BY MR. PATCH:

3 Q. On the photo simulation that you did from Lake Umbagog,  
4 could you just tell the Committee what the distance is  
5 that that's from the site where the turbines are  
6 proposed to be located? I'm not sure that was clear in  
7 the record. But I think it was Viewpoint 19 there.

8 A. Yes, Viewpoint 19. And, that distance is 13.4 miles.

9 Q. The response that Mr. Roth had you read to PC 4-45, I  
10 wonder if you could just read the rest of the response  
11 into the record that he did not have you read.

12 A. Yes. Shall I start at the place where I stopped  
13 before?

14 Q. Yes.

15 A. "In conducting a visual assessment, the central  
16 question is not whether wind turbines are attractive,  
17 but whether the site can accommodate the proposed  
18 projects without unreasonable adverse impacts to the  
19 documented scenic and recreational resources within the  
20 region."

21 Q. Okay. Thank you. In response to one question about

22 viewpoints, I think you referred to a "Phillips Pond",  
23 and I think you meant "Millsfield Pond". But maybe you  
24 could just tell me. This is one of the viewpoints

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1 that's mentioned.  
2 A. Yes, we did a simulation of this as well, from  
3 Millsfield Pond. What was your question?  
4 Q. Well, I think you said "Phillips Pond" in response to  
5 the question. And, I don't know of a "Phillips Pond",  
6 but I know of "Millsfield". And, I just wanted to make  
7 sure the record was clear on that.  
8 A. Oh. Well, there was Millsfield. We did do -- We did  
9 do a simulation from, yes, there is a Phillips Pond.  
10 Q. Three is, okay.  
11 A. And, we do a simulation from Phillips Pond.  
12 Q. And, could you tell us --  
13 A. I don't know that we have it here.  
14 Q. Okay.  
15 A. We probably do. Do you want me to get it?  
16 Q. Yes. If you could find it, that would be helpful.  
17 A. And, we also have -- we did two. We also did two  
18 simulations from Millsfield Pond.  
19 Q. And, do you know what the distance is, the Phillips  
20 Pond simulation that you did, is from the closest  
21 proposed turbine?  
22 A. This is two miles.  
23 Q. Okay. And, can you explain the location of Phillips  
24 Pond? Is it to the west or the east?

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1 A. It's west of the Project site.

2 Q. West of the Project. And, do you know, are there any  
3 camps, any houses, anything on Phillips Pond, do you  
4 know?

5 A. There, to my knowledge, there's one camp on Phillips  
6 Pond.

7 Q. And, do know if that's a leased camp, as compared to an  
8 owned camp?

9 A. That I don't know.

10 MR. PATCH: Okay. I have no further  
11 questions. Thank you.

12 CHAIRMAN GETZ: Okay. Thank you.  
13 Anything further for --

14 BY MR. NORTHROP:

15 Q. One minor issue, it has to do with the simulation that  
16 you have there of Phillips Pond. What string of towers  
17 are those that you're looking for that simulation?

18 A. Kelsey and Owl head.

19 Q. Excuse me?

20 A. Mount Kelsey and Owl head.

21 MR. NORTHROP: Okay. Thank you.

22 CHAIRMAN GETZ: Anything else from the  
23 Subcommittee? Mr. Roth, you have recross about one of the  
24 three areas that were brought up on redirect?

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1 MR. ROTH: Yes.

2 BY MR. ROTH:

3 Q. I would just ask if she would display the simulation of  
4 the Millsfield Pond that they did for the benefit of

5 the Committee.  
6 A. I'm going to put these down, because it's running out  
7 of shelf space.

8 CHAIRMAN GETZ: And, you're asking for  
9 Millsfield Pond?

10 MR. ROTH: That is correct. I think  
11 it's 22a, and 22b. There are two of them.

12 WITNESS VISSERING: I am not seeing  
13 Millsfield Pond.

14 MR. PATCH: I think actually -- I don't  
15 think that's a simulation.

16 WITNESS VISSERING: Huh?

17 MR. PATCH: If I could just clarify. I  
18 don't know that there's a simulation. I think what  
19 Mr. Roth may be referring to is what's part your report  
20 that was filed.

21 WITNESS VISSERING: I'm sure I have the  
22 copies --

23 MR. ROTH: The documents that went with  
24 her report, --

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1 MR. PATCH: Ri ght.

2 MR. ROTH: -- 22a and 22b, appear to be  
3 photo simulati ons of Mi l l sfi el d Pond. Unl ess these guys  
4 have gotten ahead of the bui l di ng process.

5 CHAIRMAN GETZ: And, I take it you were  
6 asking to see a bl own-up versi on?

7 MR. ROTH: Yes.

8 CHAIRMAN GETZ: And, it appears there --

9 MR. ROTH: She doesn't have them.

10 CHAIRMAN GETZ: -- there is not a  
11 blown-up version of either of those?

12 WITNESS VISSERING: There were two.  
13 There was 22a and 22b. And, I do have color versions  
14 here, I could unsnap them and pass them around, if that  
15 would help. I thought we had all of them here.

16 MR. ROTH: Yes, I guess that would be my  
17 second choice.

18 WITNESS VISSERING: Okay.

19 MR. ROTH: If you don't have --

20 WITNESS VISSERING: I apologize.

21 MR. ROTH: -- the enlargements, then  
22 just if you wouldn't mind showing the colored images that  
23 you have to the Committee.

24 WITNESS VISSERING: Would you like me to  
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[WITNESS: Vi sseri ng]

1 pass them around to the Committee?

2 MR. ROTH: Yes, please.

3 WITNESS VISSERING: If I can just say --  
4 explain it a little bit. That one is --

5 CHAIRMAN GETZ: Well, I guess, do we  
6 know what the question is?

7 WITNESS VISSERING: First of all, --

8 MR. ROTH: I don't have a question. I  
9 just wanted her to display those pictures for the benefit  
10 of the Committee.

11 WITNESS VISSERING: Yes, I just thought  
12 it might be helpful to, so you know, there is -- one of  
13 them, the first one is looking towards Kelsey Mountain.  
14 And, then, because of the proximity there, well, actually,

15 the first one is Owl head, part of Owl head, and then the  
16 Kelsey Mountain extends to the right in the paragraph.  
17 They should be matched.

18 MR. ROTH: So, the pictures would fit  
19 together, not an overlap?

20 WITNESS VISSERING: That's right.

21 CHAIRMAN GETZ: Okay. Is that all,  
22 Mr. Roth?

23 MR. ROTH: Yes, sir. Thank you.

24 CHAIRMAN GETZ: Okay. Then, the witness  
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1 is excused. Thank you very much. Let's, at this point,  
2 take about a 15 minute recess, and then we will resume  
3 with the direct examination of Dr. Luhman. Thank you,  
4 everyone.

5 MR. ROTH: Thank you.

6 (Recess taken at 3:37 p.m. and the  
7 hearing reconvened at 3:58 p.m.)

8 CHAIRMAN GETZ: Okay. We're back on the  
9 record. And, we'll start with the direct examination of  
10 the Applicant's witness, Dr. Luhman.

11 MS. GEIGER: Thank you, Mr. Chairman.

12 Is it okay if I direct my questions to the witness  
13 sitting?

14 CHAIRMAN GETZ: Please.

15 MS. GEIGER: Thank you.

16 (Whereupon Hope Luhman was duly sworn  
17 and cautioned by the Court Reporter.)

18 HOPE LUHMAN, SWORN

19 DIRECT EXAMINATION

20 BY MS. GEIGER:

21 Q. Good afternoon. Could you please state your name for  
22 the record.

23 A. Hope Luhman.

24 Q. And, Ms. Luhman, by whom are you employed and in what  
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[WITNESS: Luhman]

1 capaci ty?

2 A. I'm employed by the Louis Berger Group, Incorporated.  
3 And, I'm an Assistant Director for Cultural Resources  
4 and Senior Archeologist.

5 Q. Okay. Are you the same Hope Luhman who submitted  
6 prefiled testimony in this docket, which has been  
7 marked as "Petitioner's Exhibit 17"?

8 A. Yes.

9 MS. GEIGER: Okay. And, for the  
10 Committee, Ms. Luhman's prefiled testimony is contained in  
11 Volume 1, Tab (h).

12 BY MS. GEIGER:

13 Q. Ms. Luhman, did you also submit supplemental prefiled  
14 testimony in this docket, which has been marked as  
15 "Petitioner's Exhibit 18"?

16 A. Yes, I did.

17 MS. GEIGER: Okay. And, for the  
18 Committee again, Ms. Luhman's supplemental prefiled  
19 testimony is contained in Volume 1a, Tab (h).

20 BY MS. GEIGER:

21 Q. Ms. Luhman, do you have any corrections or updates to  
22 either your prefiled or supplemental prefiled  
23 testimony?

24 A. I have two updates to my supplemental testimony. On

[WITNESS: Luhman]

1 Page 2 of my supplemental testimony, down at the bottom  
2 of the page, I think it's Lines 22 and 23, it  
3 references the conclusion of our Phase 1B archeological  
4 survey, and notes that our opinion was that no further  
5 work was warranted. On February 16th, Edna Feighner,  
6 of the New Hampshire Division of Historic Resources,  
7 the New Hampshire SHPO, issued a letter basically  
8 concurring with our findings.

9 Q. And, is that report from Ms. Feighner contained in any  
10 of the filings made by the Applicant in this docket?

11 A. That letter, I believe you've attached it as Exhibit --  
12 I don't recall the exhibit number.

13 Q. Okay. I believe it's Volume 6, under Tab 46(b). Would  
14 that be it?

15 A. I believe so.

16 Q. Okay. Are there any other updates or corrections to  
17 either your supplemental prefiled or your prefiled  
18 testimony?

19 A. On the supplemental testimony, on the third page,  
20 middle of the page, I believe it's like Lines 15 and  
21 16, it references a meeting that was conducted at the  
22 New Hampshire Division for Historic Resources, on  
23 January 25th, I believe, or January 27th, at which it  
24 was determined that several of the resources of

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1 historic properties for which effect determinations  
2 needs to be made could not be made at that meeting.  
3 And, it was suggested that a site visit be conducted on

4 February 25th. That site visit was, in fact, conducted  
5 on February 25th. In attendance was Berger's  
6 Architectural Historian, Roger Ciuffo; Richard Roach,  
7 from the United States Army Corps of Engineers;  
8 Christine, I can't remember her last name, Christine  
9 St. Louis, from the New Hampshire SHPO's office; and  
10 Pip Decker, from Noble Environmental Power. They  
11 visited the four properties for which they could not  
12 make effects determination at the January meeting.  
13 And, effects determinations were reached. And,  
14 basically, the cultural resource process, the Section  
15 106 process was concluded at that time. Those four  
16 properties were all determined to have no adverse  
17 effect.

18 Q. Now, Ms. Luhman, I put before you a document that I  
19 have premarked for identification as "Petitioner's  
20 Exhibit 36". Could you please identify that document.

21 A. This is the meeting minutes from that February 25th  
22 meeting. Roger Ciuffo, architectural historian,  
23 drafted meeting minutes for that site visit, which  
24 basically documented the attendees and what happened

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1 during that particular site visit, and then documents  
2 basically all the effect determinations for the eight  
3 properties that were determined to be eligible for the  
4 National Register.

5 Q. And, Ms. Luhman, are there any additional corrections  
6 or updates --

7 A. No.

8 Q. -- to your testimony?

- 9 A. No.
- 10 Q. Okay. Thank you. Now, with the corrections and
- 11 updates and the information that you just provided, if
- 12 you were asked the same questions as those that are
- 13 contained in what have been marked as "Exhibits 17" and
- 14 "18" today under oath, would your answers be the same
- 15 as the answers that you gave in those prefiled
- 16 testimonies?
- 17 A. Yes, they would.

18 MS. GEIGER: Okay. Thank you, Mr.

19 Chairman. The witness is available for cross-examination.

20 CHAIRMAN GETZ: All right. Thank you.

21 Ms. Linowes?

22 MS. LINOWES: No questions.

23 CHAIRMAN GETZ: Dr. Publicover?

24 DR. PUBLICOVER: No questions.

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1 CHAIRMAN GETZ: Mr. Mulholland?

2 MR. MULHOLLAND: No, Mr. Chairman.

3 CHAIRMAN GETZ: Mr. Roth?

4 MR. ROTH: I just have very -- maybe one

5 or two.

6 CROSS-EXAMINATION

7 BY MR. ROTH:

- 8 Q. To the best of your knowledge, are there any
- 9 outstanding responsibilities that the Applicant has
- 10 with respect to the New Hampshire Department of History
- 11 Resources?

12 A. To my knowledge, no. The only remaining task that we

13 have submitted to the New Hampshire Division for

14 Historic Resources are the Final effects forms, that  
15 basically are merely a summary of that meeting from  
16 February 25th. Those forms have, in fact, been  
17 delivered. I do not believe that there is any further  
18 material that needs to be addressed. We discussed that  
19 with respect to the archeological component at our  
20 meeting in January, and that was determined to be  
21 concluded. And, I believe this is the last bit that  
22 needs to be done. And, for all intents and purposes,  
23 the process is completed.

24 Q. So, is there any mitigations that NHDHR is going to  
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1 request or has requested?

2 A. To my knowledge, no. There would be no mitigation,  
3 because there is no adverse effect.

4 Q. Okay. So, there's no -- I just want to be really clear  
5 about this, because in the last proceeding that we had  
6 involving another project, there was some ambiguity  
7 about what remained to be done, and it resulted in  
8 further work, after the order was issued, and  
9 potentially a delay in the start of the project because  
10 of the approach that was taken by both the agency and  
11 the certificate holder in that case. And, so, there is  
12 no memorandum of understanding or anything like that  
13 that has any further responsibilities that will be  
14 incorporated into the record -- or, a certificate in  
15 this case?

16 A. Not to my knowledge. There's no need for it, because  
17 there's no adverse effect.

18 MR. ROTH: Okay. Thank you.  
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19 CHAIRMAN GETZ: Any questions from the  
20 Commi ttee?

21 (No verbal response)

22 CHAIRMAN GETZ: Redi rect?

23 MS. GEIGER: No thank you.

24 CHAIRMAN GETZ: Okay. Then, hearing

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1 nothing for this witness, you're excused. Thank you.

2 MS. GEIGER: Mr. Chairman, is it okay  
3 for the next panel of witnesses to take the stand?

4 CHAIRMAN GETZ: Yes, let's bring up --  
5 is it Mr. Gravel and Mr. Pelletier?

6 MS. GEIGER: That's correct.

7 MR. MULHOLLAND: Mr. Chairman, we are  
8 just about to have a mitigation agreement brought over  
9 here that involves some slight change to Mr. Pelletier and  
10 Mr. Gravel's testimony, in terms of the terms of that  
11 mitigation agreement on the parts that are going to be  
12 considered. So, I guess I would ask for any  
13 cross-examination that Fish & Game has or AMC also has on  
14 that issue to be deferred until it comes, and everyone can  
15 take a look at it. Maybe, for the meantime, questions can  
16 be posed about the issues that aren't encompassed in that  
17 mitigation agreement, which would be migratory birds and  
18 bats.

19 CHAIRMAN GETZ: Yes, that was going to  
20 be my question, is what progress can we make on issues  
21 unrelated to the Mitigation Plan, that I guess is  
22 described in general terms in the supplemental testimony,  
23 but which we don't have the details yet. So, let me just

24 ask, you know, Ms. Linowes and Mr. Roth, in particular,  
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1 are there questions that you can begin your  
2 cross-examination on unrelated to the issues that are the  
3 subject of the Mitigation Plan?

4 MS. LINOWES: Yes, Mr. Chairman. None  
5 of my questions are related to the Mitigation Plan. Well,  
6 I guess -- yes, they're not related.

7 CHAIRMAN GETZ: Okay. Well, then, let's  
8 --

9 MR. ROTH: And, the same is true for me.  
10 I would, and I guess I would stand with Fish & Game and  
11 AMC, that, if they don't have a Mitigation Plan, I would  
12 reserve my rights with them to do a full cross-examination  
13 on high elevation spruce-fir habitat, marten, thrush, and  
14 linx, but --

15 CHAIRMAN GETZ: Certainly.

16 MR. ROTH: But, with respect to  
17 migratory birds and bats and raptors, I do have questions  
18 prepared that I would like to ask, that I could ask now.

19 CHAIRMAN GETZ: Okay. Yes, I would like  
20 to make as much progress as we can with this panel. And,  
21 I would hope to recess for the day by 5:30. So, let's do  
22 the direct examination, and then we'll turn to I guess the  
23 first cross-examination will be my Ms. Linowes.

24 (Whereupon Stephen Pelletier and Adam  
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[WITNESS: Pelletier/Gravel]

1 Gravel was duly sworn and cautioned by

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the Court Reporter.)

STEPHEN PELLETIER, SWORN

ADAM GRAVEL, SWORN

DIRECT EXAMINATION

BY MS. GEIGER:

Q. Okay. We'll start with you, with Mr. Gravel. Would you please state your name for the record.

A. (Gravel) My name is Adam Gravel.

Q. Could you please pull the microphone up close to you, if you could.

A. (Gravel) My name is Adam Gravel.

Q. By whom are you employed and in what capacity?

A. (Gravel) Stantec Consulting, as Project Manager and Wildlife Biologist.

Q. And, what are your responsibilities at Stantec?

A. (Gravel) I am responsible for multiple resource assessment projects, particularly with wind projects, bird and bat impact studies and habitat impact studies.

Q. And, Mr. Pelletier, could you please state your name for the record.

A. (Pelletier) Stephen Pelletier.

Q. And, by whom are you employed and in what capacity?

A. (Pelletier) Stantec, Stantec Consulting. I work as a  
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Principal Biologist and as a Wildlife Biologist.

Q. Okay. And, do you have any certifications?

A. (Pelletier) I'm certified as a Wildlife Biologist by the Wildlife Society, a Professional Wetlands Scientist by the Society of Wetlands Scientists, I'm a Licensed Forester, and I'm certified by both the Society of

7 American Foresters and Forest Guild.  
8 Q. Okay. Are you the same Adam Gravel and Stephen  
9 Pelletier who submitted prefiled testimony in this  
10 docket that has been marked as "Petitioner's Exhibit  
11 13"?

12 A. (Gravel) Yes.

13 MS. GEIGER: And, for the Committee, the  
14 Committee's reference, the Gravel and Pelletier prefiled  
15 testimony is located in Volume 1, Tab (f).

16 BY MS. GEIGER:

17 Q. And, Mr. Gravel and Pelletier, did you also submit  
18 supplemental prefiled testimony in this docket, which  
19 has been marked as "Petitioner's Exhibit 14"?

20 A. (Gravel) Yes.

21 MS. GEIGER: Again, for the Committee's  
22 reference, this information is found in the supplemental  
23 prefiled testimony, it's in Volume 1a, Tab (f).

24 BY MS. GEIGER:

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1 Q. For the panel, do you have any corrections or updates  
2 to either your prefiled or supplemental prefiled  
3 testimony?

4 A. (Gravel) Yes. I have a short list here that I can  
5 rattle off pretty easily. On Page 6, I'm on the  
6 prefiled testimony, the July 2008 prefiled testimony,  
7 Page 6, Line 6, Attachment A, Table 3. This table has  
8 been -- has since been updated to include more recent  
9 publicly available survey results.

10 CHAIRMAN GETZ: Just a second. You mean  
11 "Table 1" should say "Table 3"?

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WITNESS GRAVEL: Excuse me. Thank you.

12  
13 Yes.

14 CHAIRMAN GETZ: All right.

15 BY THE WITNESS:

16 A. (Gravel) And, that -- the addition is now in the  
17 supplemental testimony as Attachment 5. In the  
18 prefiled testimony, a table of publicly available  
19 preconstruction raptor survey results was not provided.  
20 However, in our supplemental testimony, it's included  
21 as "Attachment 4".

22 Page 13, the raptor mortality table,  
23 summary table, has since been updated with more recent  
24 results, and is also included in our supplemental  
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1 testimony labeled "Table 1", on Page 31. Again,  
2 Attachment A, Table 6, of our prefiled testimony, has  
3 been updated with more recent publicly available  
4 preconstruction bat survey results. And, it's labeled  
5 as "Attachment 6" of our supplemental testimony.

6 The table on Page 26 of our prefiled  
7 testimony, regarding the impacted acres above  
8 2,700 feet in elevation, has now been revised, due to  
9 road -- some road alignment changes, to avoid specific  
10 wetlands and steep slopes. And, this table has been  
11 revised to read --

12 BY MS. GEIGER:

13 Q. And, again, this is on Page 26 of your prefiled  
14 testimony, correct?

15 A. (Gravel) Yes. So, I'm going to go work down from the  
16 top of this table: Dixville Peak, the impacted acres

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17 is now 31.4; Mount Kelsey is now 36.9; Owlhead Mountain  
18 is 8.4; Fishbrook Ridge is 3. -- excuse me, 3; for a  
19 total of 79.7 acres of impact. Now, the far right  
20 column, starting from the top: Dixville Peak is now  
21 1.6 percent; Mount Kelsey is 2.2 percent; Owlhead  
22 Mountain, 17.1 percent; and Fishbrook Ridge,  
23 1.9 percent; for a total of 2.1 percent.

24 On Page 26, Lines 15 and 16, we would  
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[WITNESS: Pelletier/Gravel]

1 I like to revise that statement to read "consequently no  
2 unreasonable adverse impacts". "Unreasonable" is the  
3 new word that we hadn't -- we did not have in that  
4 sentence. On Page 26, Lines 14 -- excuse me, Lines 4  
5 and 7, this is, basically, this is taken from the table  
6 we just revised. So, the number should be "2.1".

7 Q. An, that's on Line 4?

8 A. (Gravel) Yes, Lines 4 and 7. And, then, on Line 7, the  
9 total acre -- impact acres is "79.7".

10 Now, moving onto our supplemental  
11 prefilled testimony. Page 6, Line 2, we'd like to  
12 change one word from "details" to "depicts".

13 DR. KENT: Would you repeat that please?

14 WITNESS GRAVEL: Page 6, Line 2. We'd  
15 just like to change one word in that sentence. Change --  
16 Remove the word "details" and exchange it with "depicts".  
17 Page 10, Line 10, we have a couple -- this is a couple  
18 errors here, we used "77 acres" in this testimony, when it  
19 should be "79.7". That change should be applied to  
20 Page 14, in Line 9 also, and Page 19, Line 1.

21 Page 18, Line 1, "field" should be

22 corrected to read "filed". Page 24, at the end of Line  
23 17, we would like to reference "Petitioner's  
24 Exhibit 38" in this, in that sentence.

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[WITNESS: Pelletier/Gravel]

1 MS. GEIGER: And, while I have you on  
2 Petitioner's 38, I believe I had this premarked at  
3 Thursday's technical session. But I'm going to ask  
4 Attorney Iacopino if he's handed it out to members of the  
5 Committee?

6 DR. PUBLICOVER: Adam, could you repeat  
7 that change please?

8 MR. IACOPI NO: No.

9 WITNESS GRAVEL: Yes. Page 24, at the  
10 end of Line 17, we just would like to reference  
11 "Petitioner's Exhibit 38".

12 MR. ROTH: Is that "Exhibit 38" or  
13 "Appendix 38"?

14 MS. GEIGER: It's Exhibit 38.

15 BY THE WITNESS:

16 A. (Gravel) On Page 16, Line 1, we would also like to  
17 extend this sentence to knowledge a recent record of  
18 Linx tracks near the Project area. It was not in the  
19 Project area, but a recent -- recent observation by  
20 Christine Costello was observed near Dummer Pond in  
21 March 2008.

22 And, our overall conclusion of potential  
23 impacts to Canada Linx remain the same, and is  
24 described in detail on Pages 14 through 17 of our

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[WITNESS: Pelletier/Gravel]  
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1 supplemental testimony. Page 56, Line 7 and 8, there's  
2 an unfinished sentence. We'd like to reference  
3 publicly available survey results, which is -- would be  
4 Attachment -- Attachment 5.

5 DR. PUBLICOVER: Excuse me, Page 56?

6 WITNESS GRAVEL: Yes.

7 DR. PUBLICOVER: Page 56, Line 7 is  
8 blank. Line 8 is the start of the citation.

9 WITNESS GRAVEL: Excuse me, it's 46.

10 DR. PUBLICOVER: Forty-six.

11 MR. ROTH: And, what's the addition?

12 WITNESS GRAVEL: Citation or reference  
13 to publicly available survey results, which is Attachment  
14 5.

15 BY THE WITNESS:

16 A. (Gravel) Attachment 2 has an "Owl head Mountain" or  
17 "Owl head" is misspelled in the title of that map, that  
18 figure. It's spelled "Owl heand" right now, it should  
19 be "Owl head". There are a few other additions that  
20 pertain to the Mitigation Plan that -- are we  
21 addressing that later?

22 MS. GEIGER: I think that the agreement  
23 was that we would talk about mitigation issues at another  
24 time, is that correct?

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[WITNESS: Pelletier/Gravel]

1 MR. MULHOLLAND: Mr. Chairman, I believe  
2 it's coming very soon, today.

3 CHAIRMAN GETZ: Well, given the time of  
4 day, and I think there's going to be significant cross on  
5 the other issues, if we can go through the other cross,

6 and then start tomorrow when this panel comes back, that  
7 may be the better way of trying to approach the issue,  
8 rather than to rush into it when it comes hot off the  
9 presses.

10 So, let's proceed with the other issues  
11 of cross-examination.

12 MS. GEIGER: Okay. So, the  
13 understanding is the panel could come back for direct to  
14 provide some more information, to the extent that their  
15 prefiled testimony needs to be updated to reflect the  
16 information in the Settlement Agreement?

17 MR. MULHOLLAND: No objection, Mr.  
18 Chairman.

19 CHAIRMAN GETZ: Is there any objection  
20 to that proposal, that there will be some summary of the  
21 document? Because I assume what -- my working assumption  
22 is that it's not going to be entirely consistent with the  
23 outlines that are in the supplemental testimony. So, I  
24 think it would be useful for the Committee to have some

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[WITNESS: Pelletier/Gravel]

1 kind of brief at least description or summary, comparing  
2 what the end result is to what's in the testimony. So,  
3 we'll do that tomorrow, when we have the document before  
4 us.

5 MR. ROTH: Mr. Chairman, with respect to  
6 that, while it's -- I anticipate that I will not have any  
7 objection to the Mitigation Plan, I have not seen it in  
8 some time. And, I guess, to the extent that additional  
9 direct is introduced with respect to that Mitigation Plan,  
10 I'd reserve the right to ask some questions about it.

11 CHAIRMAN GETZ: Certainly. Yes, you'll  
12 be able to cross-examine with respect to whatever the  
13 Mitigation Plan looks like.

14 MR. ROTH: I'm hoping I won't have to,  
15 but, since I haven't seen it in a while, I'm being  
16 careful.

17 DR. PUBLICOVER: Mr. Chairman, does that  
18 apply to all parties?

19 CHAIRMAN GETZ: Absolutely. We're not  
20 going to require you to forgo cross on documents you  
21 haven't seen yet, and we're probably going to have  
22 questions of our own.

23 BY MS. GEIGER:

24 Q. Mr. Gravel, are you finished in providing an update or  
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[WITNESS: Pelletier/Gravel]

1 corrections to your prefiled and supplemental prefiled  
2 testimony?

3 A. (Gravel) Yes.

4 Q. Now, you've taken a look at what's been premarked as  
5 "Exhibit 38", correct?

6 A. (Gravel) Yes.

7 Q. And, you've made all the necessary corrections that you  
8 need in your prefiled to deal with that?

9 A. (Gravel) Yes.

10 Q. And, you've indicated there's nothing further that you  
11 need to discuss, in terms of corrections or  
12 modifications?

13 A. (Gravel) That's correct.

14 MR. ROTH: Susan, I'm sorry, this  
15 document you gave me a minute ago, that's 38?

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16 MS. GEIGER: I believe it is.

17 MR. ROTH: Okay. There's just nothing  
18 marked on it.

19 MR. IACOPI NO: The original, the marked  
20 copy is over here.

21 MR. ROTH: Okay. Thank you.

22 BY MS. GEIGER:

23 Q. With the corrections and updates that you've just gone  
24 through, to both your prefiled and supplemental  
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[WITNESS: Pelletier/Gravel]

1 prefiled testimonies that have been marked today for  
2 identification as "Petitioner's Exhibits 13" and "14",  
3 if I asked you the same questions today under oath, as  
4 those contained in the exhibits I just referenced,  
5 would both of your answers to those questions be the  
6 same?

7 A. (Pelletier) Yes.

8 A. (Gravel) Yes.

9 MS. GEIGER: The witnesses are available  
10 for cross-examination.

11 CHAIRMAN GETZ: Thank you. Ms. Linowes.

12 MS. LINOWES: Thank you, Mr. Chairman.

13 CROSS-EXAMINATION

14 BY MS. LINOWES:

15 Q. Mr. Pelletier and Mr. Gravel, I don't know if you both  
16 wrote this testimony, so -- this is in the supplemental  
17 testimony --

18 MS. LINOWES: Oh, actually, before I get  
19 started, I'm going to be referencing several exhibits that  
20 I handed out. And, Mr. Pelletier and Mr. Gravel, I did

21 give you a copy of the set. Do you have copies up there?

22 WITNESS PELLETIER: We have a copy.

23 MS. LINOWES: Okay. They would be all

24 marked "IWA-X", for "cross-examination", and now the

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1 numbers are somewhat random, but they're 20, 21, 23a and  
2 b, which are at the very bottom, those would be the two  
3 color photos, 25, 26, 27, and 29. Again, I pick numbers  
4 that I would not accidentally duplicate. But they're only  
5 intended to be unique and have no meaning beyond that.

6 MS. GEIGER: Ms. Linowes, I apologize  
7 for the interruption. I just wanted to note for the  
8 record that these exhibits were not premarked at the  
9 technical session that we had last Thursday, and that the  
10 Applicant has just received these exhibits from Ms. Lowe  
11 -- Ms. Linowes today just before the noon break.

12 MS. LINOWES: Thank you, Ms. Geiger. I  
13 will be explaining each one. I don't think they're  
14 difficult to follow.

15 MR. IACOPI NO: Do you have one more set  
16 of them?

17 MS. LINOWES: I'm sorry?

18 MR. IACOPI NO: Do you have one more set  
19 of them?

20 MS. LINOWES: No. Everyone else has a  
21 copy but you, I think, Mike.

22 CHAIRMAN GETZ: Off the record.

23 (Brief off-the-record discussion

24 ensued.)

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[WITNESS: Pelletier/Gravel]

- 1 CHAIRMAN GETZ: Back on the record.
- 2 BY MS. LINOWES:
- 3 Q. In your supplemental testimony of February 25th, you
- 4 make reference several times to the "U.S. Fish &
- 5 Wildlife Guidelines entitled "Service Interim
- 6 Guidelines for Avoiding and Minimizing Wildlife Impacts
- 7 from Wind Turbines", is that correct?
- 8 A. (Pelletier) That's correct.
- 9 Q. And, it appears, from your references, that you are
- 10 less than enthusiastic about the Guidelines, is that a
- 11 fair assessment?
- 12 A. (Pelletier) We recognize the Guidelines are an evolving
- 13 document. And, we've come a long way since those first
- 14 came out. And, again, they are guidelines.
- 15 Q. Oh, excuse me, if I may interrupt. You said "we've
- 16 come a long way from those". Have the Guidelines that
- 17 I'm referencing changed?
- 18 A. (Gravel) Not since 2003.
- 19 Q. In particular, you make -- you make point on the
- 20 Guidelines "interim" and "voluntary", is that correct?
- 21 A. (Gravel) Yes.
- 22 Q. And, you seem to complain, particularly about some of
- 23 my prefiled testimony, that I rely too heavily on the
- 24 preconstruction studies that are recommended as part of

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[WITNESS: Pelletier/Gravel]

- 1 the Guidelines. Is that a fair assessment?
- 2 A. (Pelletier) I think it's -- we're using, in
- 3 consultation with a lot of other agencies and a lot of

- 4 other states, that other processes are more widely  
5 used.
- 6 Q. Could you just answer my question please. You complain  
7 to a large extent that I appear, in my prefilled  
8 testimony, to be relying too heavily on it?
- 9 A. (Pelletier) I wouldn't say we were complaining.
- 10 Q. You highlight that as perhaps a flaw in my prefilled  
11 testimony?
- 12 A. (Pelletier) We don't rely, as we haven't relied as  
13 heavily on U.S. Fish & Wildlife Guidelines that were  
14 introduced back in 2003 on a lot of projects that we're  
15 doing now or have been doing over the last few years.
- 16 Q. Now, Mr. Pelletier, can you -- I'm going to reference  
17 the first exhibit that I handed -- one of that pile,  
18 it's "IWA-X-21". Do you see that one? That's the memo  
19 that accompanied the Guidelines at the time when they  
20 were released?
- 21 A. (Pelletier) That's correct.
- 22 Q. And, at the bottom, at the last paragraph, first page,  
23 it gives the purpose of the Guidelines, do you see  
24 that?

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[WITNESS: Pelletier/Gravel]

- 1 A. (Pelletier) Yes.
- 2 Q. And, it reads "It is intended to assist the Service  
3 staff in providing technical assistance to the wind  
4 energy industry to avoid and minimize impacts to  
5 wildlife and their habitats", and then it gives how it  
6 goes about doing that. Is that true?
- 7 A. (Pelletier) That's correct.
- 8 Q. So, do you agree that Fish & Wildlife Service has

- 9 federal oversight over migratory birds and other  
10 wildlife?  
11 A. (Pelletier) Yes, they do.  
12 Q. Okay. And, so, their intent is obviously focused on  
13 protecting that wildlife?  
14 A. (Pelletier) Yes.  
15 Q. Not being anti-wind?  
16 A. (Pelletier) No, it's to protect the resource.  
17 Q. Would you agree that, although the guidelines are  
18 termed "interim", they represent the best advice of the  
19 agency, even though you may not necessarily agree with  
20 them?  
21 A. (Pelletier) In 2003, it was a document that everyone  
22 was trying to assemble a way of taking on and examining  
23 a project. So, I think it was a good approach in 2003.  
24 Q. Uh-huh. Now, isn't it true that there are many  
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[WITNESS: Pelletier/Gravel]

- 1 wildlife biologists, ornithologists, and bat experts  
2 that do not agree with you in your methodology for  
3 preconstruction studies?  
4 A. (Pelletier) Could you ask that again.  
5 Q. Do all wildlife biologists, ornithologists, and bat  
6 experts agree that, with you, or disagree with you --  
7 or, let's put it in the positive, they agree with you  
8 that the Fish & Wildlife Service Guidelines are  
9 inappropriate, inaccurate, somehow fall short, based on  
10 today's standards?  
11 A. (Pelletier) I don't know.  
12 Q. Have you --  
13 A. (Pelletier) I can't imagine everybody agrees on

- 14 everything, though.
- 15 Q. Okay. You make reference to another Director's memo in
- 16 your testimony, I believe that's on Page 28 of your
- 17 testimony. Let me just find that.
- 18 A. (Pelletier) Of which testimony?
- 19 Q. Of your prefiled February 23rd testimony.
- 20 A. (Gravel) It's Page 27.
- 21 Q. Twenty-seven? I believe it's Page 28 of 56.
- 22 A. (Gravel) Well, it's cited on Page 27, Line 9.

23 CHAIRMAN GETZ: We're talking about the

24 supplemental testimony here?

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[WITNESS: Pelletier/Gravel]

- 1 MS. LINOWES: Supplemental testimony.
- 2 WITNESS GRAVEL: Yes.
- 3 BY MS. LINOWES:
- 4 Q. Line 9, where it says "where information is considered
- 5 insufficient", is that what you're reading?
- 6 A. (Gravel) I'm just --
- 7 Q. I'm on Page 28.
- 8 A. (Pelletier) I'm sorry, we're on Page 28, Line 9?
- 9 Q. Yes, that's right. That's where you actually quote
- 10 from the document. Okay. Before I get to that,
- 11 though, I want to -- I'm going to come back to that in
- 12 a second. And, this exhibit that I just pointed to,
- 13 this memo from 2003, on the second page, third
- 14 paragraph, it says "Implementation of Service
- 15 recommendations provided in accordance with these
- 16 Guidelines by the wind energy industry is voluntary",
- 17 which you, obviously, agree, "field offices have
- 18 discretion in the use of these Guidelines on a

19 case-by-case basis and may also have additional  
20 recommendations to add, which are specific to their  
21 geographic area." Is that correct?

22 A. (Pelletier) That's correct.

23 Q. Then, in the testimony that you cited later, the memo  
24 by the Director, April 2004, and this is beginning on

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[WITNESS: Pelletier/Gravel]

1 Line 18 of Page 28 of your testimony. You say  
2 "However, where risk is considered sufficiently high  
3 and available data and/or local knowledge indicate that  
4 weather variations, changing flight paths or variable  
5 timing of migrants" -- "migration warrant it, three  
6 years of data collection using the most appropriate  
7 tools available should remain the standard." Is that  
8 what it says?

9 A. (Pelletier) It did it does.

10 Q. Okay. So, this is the memo, again, from the U.S. Fish  
11 & Wildlife Service, in reference to the Guidelines,  
12 reinforcing the point that, in the event that there is  
13 believed to be a high risk to migratory birds, bats,  
14 wildlife, three years of data collection would be the  
15 standard. Is that correct?

16 A. (Pelletier) And, that's a 2004 citation. That's  
17 correct.

18 Q. Now, I want to draw your attention to a letter. This  
19 would be a letter from U.S. Fish & Wildlife Service  
20 Field Office here in New Hampshire, and it is "Exhibit  
21 IWA-X-20". Do you see that? This would be to  
22 Mr. Joshua Brown, and it's signed by Vernon Lang?

23 A. (Pelletier) Yes.

24 Q. And, the third paragraph on that page, this is 2008,  
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1 "Our prior recommendation identified three years of  
2 radar studies, and that is what we continue to  
3 recommend for this Project." Do you see that?  
4 A. (Pelletier) Yes, I do.  
5 Q. So, while the memo you say is three years or four or  
6 five years old, 2004, the Interim Guidelines are, which  
7 are the best available information from the Wildlife  
8 Service, states "three years". It appears to still be  
9 the standard, as far as the Field Office of the U.S.  
10 Fish & Wildlife Service here in New Hampshire? Would  
11 you agree?  
12 A. (Pelletier) At least from Vern Lang.  
13 Q. Do you agree that it's the standard for the Fish &  
14 Wildlife Service in New Hampshire's office?  
15 A. (Pelletier) I'm not sure --  
16 Q. What is the letterhead on the letter?  
17 A. (Pelletier) We have a letter from the U.S. Fish &  
18 Wildlife Service, signed by Vern Lang, recommended  
19 three years, in --  
20 Q. Thank you.  
21 A. (Pelletier) -- dated April 2008.  
22 Q. Okay. Do you agree that it's with the New Hampshire  
23 Fish & Wildlife Service authority, as stated in the  
24 Director's memo of 2004 and 2003, to make this  
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[WITNESS: Pelletier/Gravel]

1 recommendation that they have the expertise on staff to  
2 make such a determination?

- 3 A. (Pelletier) They have that authority.
- 4 Q. You don't believe they have the expertise to make the
- 5 determination?
- 6 A. (Pelletier) They have a number of very good biologists
- 7 on their staff.
- 8 Q. Okay. You have determined in this case, for your
- 9 client, that three seasons of radar studies is
- 10 sufficient, is that -- three seasons, correct?
- 11 A. (Gravel) Yes, that's based on several years of
- 12 experience --
- 13 Q. I didn't ask what it was based on.
- 14 A. (Gravel) -- wind projects.
- 15 Q. If you could just answer my question.
- 16 A. (Gravel) Yes.

17 CHAIRMAN GETZ: Well, he answered the

18 question. And, you know, we stated at the beginning of

19 these proceedings, we're going to -- if the witnesses

20 answer directly, they have the opportunity to explain.

21 But let's proceed with your questions.

22 MS. LINOWES: Okay.

23 BY MS. LINOWES:

- 24 Q. So, that is Fall '06, Spring '07 and Fall '07, is that
- {SEC 2008-04} [Day 2] {03-10-09}

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[WITNESS: Pelletier/Gravel]

- 1 correct?
- 2 A. (Gravel) Yes.
- 3 Q. Do the Guidelines distinguish between seasons or years?
- 4 A. (Gravel) It distinguished between years.
- 5 Q. Okay. So, now, I want to draw your attention to
- 6 another exhibit I handed out. This would be
- 7 "IWA-X-25". This is also an exhibit that I included

8 with my prefilled testimony, but, for convenience, I've  
9 just made another copy for everyone. Do you recognize  
10 this organization, "Hawk Migration Association of North  
11 America"?

12 A. (Gravel) Yes.

13 Q. And, this -- it's a little hard to read, this was  
14 printed right off their website. But, if you go down  
15 about three-quarters of the way down the page, or  
16 two-thirds of the way, it reads the "HMANA Industrial  
17 Wind Turbine Siting and Monitoring Policy", do you see  
18 that? It's a little hard to read.

19 A. (Gravel) Which -- Was it the third paragraph?

20 Q. Under the "Links". There's the section called "Links",  
21 and you just -- down below there there's a title of  
22 actually what this document is.

23 A. (Gravel) Yes.

24 Q. "HMANA Industrial Wind Turbine Siting and Monitoring  
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[WITNESS: Pelletier/Gravel]

1 Policy". Now, you use -- you assert in your prefilled  
2 testimony, in the original prefilled testimony, and in  
3 all of your documentation, when you did the radar --  
4 rather, the raptor studies, the daytime migrant review,  
5 that you did follow HMANA procedures, correct?

6 A. (Gravel) Yes. May I explain?

7 Q. No. Actually, I just wanted to make sure that --  
8 verify that you know what HMANA is, and that you  
9 obviously respect them as establishing standards?

10 A. (Gravel) Yes.

11 Q. Okay. And, the date of this document, the very next  
12 paragraph, or very first line under the title, "The

13 following policy update was adopted by the HMANA Board  
14 of Directors on July 8, 2008." So, it's current?

15 Fairly current?

16 A. (Gravel) Yes.

17 Q. You agree? Okay. If you go to the next page, the  
18 second paragraph there, a couple of lines down, I won't  
19 read the whole thing. But it says -- there's a  
20 sentence beginning with "Because", and, again, I  
21 apologize for the very small print there. It says  
22 "Because knowledge of raptor migration and other  
23 behavioral patterns is incomplete and raptor monitoring  
24 demonstrates high year-to-year variability in numbers

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[WITNESS: Pelletier/Gravel]

1 of migrants at most sites, mandatory design and siting  
2 standards must require the collection of at least three  
3 years of preconstruction study data for projects with  
4 landscape features. Natural history patterns or other  
5 data suggest raptor concentration is possible." Do you  
6 see that?

7 A. (Gravel) Yes.

8 Q. So, we do know that daytime migrants, raptors, do have  
9 a tendency to fly along ridgelines? I mean, that would  
10 be perceived as an area where there might be a fair  
11 amount of migration?

12 A. (Gravel) It's a topographic feature that could, but  
13 there's no -- there hasn't been any documentation of it  
14 being a concentration area to migrants or places in New  
15 Hampshire where concentration of raptors occurs, there  
16 is established Hawk Watch Sites for monitoring these  
17 birds.

- 18 Q. Okay. So, it's not usual -- it would not be unusual,  
19 in a state like New Hampshire, which is highly  
20 mountainous, for a HMANA Director to suggest that three  
21 years of study of raptor studies would be reasonable.  
22 Do you agree with that?
- 23 A. (Gravel) Yes, if natural history patterns or other data  
24 suggests raptor concentration is possible.

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[WITNESS: Pelletier/Gravel]

- 1 Q. And, we know that there are high migration areas right  
2 through New Hampshire, is that correct?
- 3 A. (Gravel) Yes.
- 4 Q. Now, I want to direct your attention to another  
5 exhibit, this would be "IWA-X-26". This is -- Are you  
6 familiar with the American Society of Mammalogists?
- 7 A. (Pelletier) Yes.
- 8 Q. Are you a member?
- 9 A. (Pelletier) No.
- 10 Q. This is a resolution that was adopted on June 2008,  
11 entitled "Effects of Wind Energy Facilities on Bats and  
12 Wildlife". Do you see that?
- 13 A. (Pelletier) Yes.
- 14 Q. Okay. Now, do either of you consider yourselves bat  
15 experts?
- 16 A. (Pelletier) I wouldn't consider myself a "bat expert".
- 17 Q. You would?
- 18 A. (Pelletier) I would not.
- 19 Q. You would not. Okay. I'm going to read you a couple  
20 of the "whereases" here, and I would like to know if  
21 you agree with what's being stated here. Starting with  
22 the second one: "Whereas, wind turbines were once

23 assumed to have no adverse environmental impacts,  
24 however, on-shore wind energy facilities have killed

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[WITNESS: Pelletier/Gravel]

1 thousands of bats and birds." Do you agree with that?

2 A. It has happened, yes. Cumulatively.

3 Q. Cumulatively?

4 A. (Pelletier) Correct.

5 Q. Which you -- The Mountaineer Project, in West Virginia,  
6 is that considered "cumulative", one project?

7 A. (Pelletier) One project has -- that's probably the most  
8 glaring example. That most folks, when they're really  
9 discussing a lot of bat issues, that's a poster project  
10 that -- that's drawn a lot of attention to it.

11 Q. Are you familiar with Buffalo Mountain, in Tennessee?

12 A. (Pelletier) I am.

13 Q. Similar kinds of problems?

14 A. (Pelletier) And, again, are those -- those are quite a  
15 distance away from the Project area that we're talking  
16 about.

17 Q. I understand that. But the point is, I would not -- I  
18 guess I'm suggesting that Mountaineer is not a poster  
19 child.

20 A. (Pelletier) It is, but it -- It is the project that a  
21 lot of the research was focused primarily on birds.  
22 And, when the post-construction studies over there  
23 started working on bats, that all of a sudden they saw  
24 high levels of bats. So, it is a concern. I agree

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1 with you.  
2 Q. Okay. And, let's me go to the next one. This is the  
3 third one down. "Whereas on-shore wind turbine  
4 construction and associated infrastructure pronounced  
5 effects on wildlife habitat, including increased  
6 habitat loss and fragmentation, and subsequent loss of  
7 species from areas around developments and alteration  
8 of dispersal or migration corridors." Do you agree  
9 that wind turbine construction and associated  
10 infrastructure causes those issues?

11 A. (Pelletier) We can go through each one of these  
12 whereases, and we agree there is validity to each of  
13 the points that these biologists have made.

14 MS. LINOWES: I guess what I would like  
15 to get on the record is the issues pertaining to wind  
16 energy and bats. And, I don't have to read through them  
17 if it's acknowledged and it's going on the record.

18 WITNESS PELLETIER: I'm fine with the  
19 whereases.

20 MS. LINOWES: I understand. I'm asking  
21 the Chairman.

22 WITNESS PELLETIER: Sorry.

23 CHAIRMAN GETZ: Well, let's get back on  
24 track here. My understanding was you were going to read

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[WITNESS: Pelletier/Gravel]

1 several of these. "Several" is how many?

2 MS. LINOWES: Just two more.

3 CHAIRMAN GETZ: Okay. Let's see if the  
4 witnesses agree with the statements of these four  
5 particular "whereas" clauses.

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MS. LINOWES: Okay.

6

7

CHAIRMAN GETZ: So, we've taken care of

8

the second and third?

9

MS. LINOWES: Yes, that's correct.

10 BY MS. LINOWES:

11

Q. Then, jumping down to the fourth, skipping the next one, and going to the "Whereas fatalities of bats and other wildlife at existing on-shore wind energy facilities have raised concern that wind turbines may have population level impacts on these species." Do you agree with that?

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A. (Pelletier) I would agree with that.

18

Q. And, "whereas researchers" -- this is the final one -- "Whereas researchers independent of the wind industry have been unable to adequately evaluate the magnitude of impacts because of limited access to wind energy facilities. But preliminary results indicate that species, such as migratory tree bats, already may be experiencing fatality rates that will lead to

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1

population declines." Do you agree with that?

2

A. (Gravel) Yes.

3

A. (Pelletier) I agree with that.

4

Q. Mr. Pelletier and Gravel, are you -- are you one of those researchers that is not considered "independent of the wind industry"?

5

6

7

A. (Pelletier) We consider ourselves independent biologists. We -- Obviously, one of our clients happens to be the wind industry, but we're still independent biologists, as are most of the folks who

8

9

10

11 are involved in this group right here, are both  
12 industry and independent consulting biologists and  
13 academics.

14 Q. All right. Okay. And, now, I want to -- we'll jump  
15 forward to down and we'll skip the rest of the  
16 whereases. And, it says "Therefore, be it resolved",  
17 and the first -- I want to read the first part of the  
18 resolution, that's (a): "Commitments to comprehensive  
19 environmental assessments that include multiyear pre-  
20 and multiyear post-construction studies be made prior  
21 to selection and construction of sites for wind energy  
22 facilities", and it's cited here "U.S. Fish & Wildlife  
23 service, the Government Accountability Office, and the  
24 National Research Council". Do you see that?

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[WITNESS: Pelletier/Gravel]

1 A. (Pelletier) Yes.  
2 Q. So, if I may ask, your position has been that U.S. Fish  
3 & Wildlife Service Guidelines are somewhat out-of-date  
4 and inappropriate or just don't apply. It appears  
5 others do not agree with you. Would you say that?  
6 A. (Pelletier) We've gone on this line for some time.  
7 And, I guess I'd like to address the point that you're  
8 talking about, the "multiple years". And, U.S. Fish &  
9 Wildlife Service is responsible on a nationwide basis  
10 to be looking at these resources. And, they have got a  
11 lot of different corners. You have the mammalogists --  
12 the corners of the country. This group, the American  
13 Society of Mammalogists, is also, you know,  
14 representing biologists from around the country. And,  
15 you're talking about groups of bats, such as Brazilian

16 Three-Tail Bats that are down in Texas, which are  
17 totally different than some of the bats we've got up  
18 here. So, what we've got is a document, both  
19 documents, that trying to address issues, resource  
20 issues on a nationwide concern, and they are relevant  
21 and they are true. What we've -- Since then, what  
22 we've got is a number of states that are working, that  
23 have worked and are working now towards developing  
24 other standards, and are looking over the shoulders of

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[WITNESS: Pelletier/Gravel]

1 each other states and coming up with different  
2 processes and methodologies.  
3 Q. Mr. Pelletier, I understand what you're saying. The  
4 point I'm making is, you can spend -- you spend a  
5 considerable amount of time in your prefiled  
6 supplemental testimony pressing the point that the U.S.  
7 Fish & Wildlife Service and the pre-construction  
8 studies that are advocated as part of those standards  
9 are not accurate, and now I'm going to come back to the  
10 studies that you had conducted, but I want to emphasize  
11 the fact that what -- where other people are. And, I  
12 will go through one last standard, if I may.

13 I want to draw your attention to  
14 IWA-X-27. You see that document? This is titled  
15 "Guidelines for Conducting Bird and Bat Studies at  
16 Commercial Wind Energy Projects". This document, as  
17 you see on the front cover, is dated January 2009, do  
18 you see that?

19 A. (Pelletier) That's correct.

20 Q. And, this is from not New Mexico, not Texas, not

21 Oregon, New York State?  
22 A. (Pelletier) It's from New York, that's correct.  
23 Q. Would you agree that New York State has a considerable  
24 amount of experience with wind energy development?

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[WITNESS: Pelletier/Gravel]

1 A. (Pelletier) Yes.  
2 Q. More so than New Hampshire?  
3 A. (Pelletier) More so than New Hampshire.  
4 Q. Before I get into the points I want to cite here, did  
5 you or your company, Stantec or Woodlot, participate in  
6 the creation of these guidelines?  
7 A. (Gravel) Yes, we did. We provided comments. And, we  
8 have since been invited back to give a presentation on  
9 what we've learned over the past five years, and also  
10 provide comments and critiques to the document that you  
11 see here.  
12 Q. Okay.  
13 A. (Pelletier) That's following up an earlier visit that  
14 we were asked to come in and speak to the biologists  
15 over, literally, you know, 100 projects, you know.  
16 And, you asked if we're experts on bats or anything,  
17 you know, those are kinds of questions that you want to  
18 have somebody who has studied bats, got Ph.Ds or a  
19 Master's, that have studied -- specifically studied  
20 bats. We've got over 100 projects where we've been  
21 working with bats, miss netting, capturing, radio  
22 tagging. And, so, I don't call myself an expert, we've  
23 got a great deal of experience with them. And, that  
24 agency was very interested in hearing not only about

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[WITNESS: Pelletier/Gravel]

- 1 bats, but also radar, but also other types of tools  
2 that we use for monitoring.
- 3 Q. And, let me ask you a question then. This is the final  
4 -- is this the draft version or is this final?
- 5 A. (Pelletier) I believe this is final.
- 6 Q. So, this presumably incorporates your comments? Or  
7 not? I mean, your comments were issued -- submitted  
8 prior to this being released, is that correct?
- 9 A. (Pelletier) It is a document that they have put out.
- 10 Q. Okay. Now, I want to draw your attention to Page --  
11 this would be the -- Page 2, there's a section called  
12 "Site and Project Description". Do you see that?
- 13 A. (Pelletier) Yes.
- 14 Q. Okay. Now, going to the next page, in this same  
15 section, there's a "2(b)" entitled "Identify landscape  
16 features and resources of potential concern." Do you  
17 see that?
- 18 A. (Pelletier) I'm sorry.
- 19 Q. Two (b).
- 20 A. (Pelletier) Two (b). Yes.
- 21 Q. Down near the bottom. It says "The presence of certain  
22 landscape features and/or ecological resources at a  
23 site can increase the likelihood that adverse impacts  
24 to bird and bat resources will result from the proposed  
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[WITNESS: Pelletier/Gravel]

- 1 wind energy facilities" -- "project." Do you see that?
- 2 A. (Pelletier) Yes.
- 3 Q. And, then, it goes on and lists (1), (2) -- (i), (ii),  
4 (iii) and (iv) as those areas of special concern. And,  
Page 197

5 I draw your attention to (iv), on the next page. It  
6 states, if I may: "The presence of a specifically  
7 identified habitat or landscape feature that may  
8 function to funnel or concentrate birds during  
9 migration or for feeding, breeding, wintering, or  
10 roosting activities, such as National Wildlife Refuges  
11 -- Refuges, high elevation mountaintops, or  
12 ridgelines."

13 A. (Pelletier) That's what it says.

14 Q. So, would you agree that the State of New York, which  
15 has a considerable amount of experience, or at least  
16 more so than the State of New Hampshire, has identified  
17 high elevation mountaintops or ridgelines as landscape  
18 features that might pose particular concern if you're  
19 erecting wind turbines, this is with regard to birds  
20 and bats, is that what it says?

21 A. (Gravel) Yes, it says, and to what you just said, yes,  
22 it might pose. However, pre-construction surveys did  
23 not document funneling or channeling, and that's what  
24 our conclusion stems from.

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1 Q. Thank you.

2 A. (Pelletier) And, I guess I would add that I don't think  
3 that what New York's implying here is that every  
4 ridgeline or every mountaintop is, you know, has -- it  
5 may have that opportunity to do that. But that type of  
6 migration, it doesn't always follow along every single  
7 one of these. So, the presence of a ridgeline doesn't  
8 necessarily mean that you hit that magic button.

9 Q. Okay. Now, the -- I want to now talk about that point.

10 I don't -- I agree, they're not saying "there's  
11 absolutely going to be a high bird or bat kill at this  
12 site." I don't think that's the point of the  
13 Guidelines. But I want to draw your attention to  
14 Page 7 of that document. Oh, I'm sorry. I'm sorry.  
15 It's actually Page 9. My apologies. Page 9. This is  
16 a section called -- Section Number 5, "Expanded  
17 Pre-Construction Studies". Do you see that?

18 A. (Pelletier) Yes.

19 Q. Okay. Now, where we were a moment ago was  
20 Section 2(b). If -- There were four Roman numerals.  
21 If a project site was characterized by any one of those  
22 four, you will go -- that we would jump into expanded  
23 pre-construction studies. And, I'll read the first  
24 sentence of that paragraph. It says "If a developer

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1 proposes to construct a wind energy project in or near  
2 one of the features or resources of concern identified  
3 in Section 2(b), then two or three years of  
4 pre-construction study will be recommended  
5 incorporating one or more of the following expanded  
6 pre-construction studies to provide in-depth  
7 information on the bird and bat resources of the site."  
8 If this Project were located in New York State, in  
9 accordance with these Guidelines, would you be  
10 obligated to -- would you be strongly encouraged, I  
11 should say, to abide by these standards?

12 A. (Pelletier) I don't believe that it's a quick slam-dunk  
13 that we'd be doing three years of studies. You know,  
14 we may have to do radar surveys. What this is -- the

15 expanded version, they're asking for radar surveys  
16 here. That's when you get into those sites that may  
17 pose an additional risk. But what we have found, each  
18 and every time we've done these things, is that you  
19 have discussions with the agencies prior to taking on  
20 these surveys. How much do you need? How many times?  
21 How many seasons? How many nights? How long you run  
22 the radar? That's where you -- and there's the  
23 difference right there. These are great guidelines and  
24 they set up a process that help people understand "What

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1 should we be looking for and what's the metrics we  
2 should be measuring?"

3 What we're doing, though, in each and  
4 every one of these cases, is meeting in advance and  
5 talking with these -- with other responsible parties  
6 and biologists, and trying to understand what we need  
7 to get done. And, that's where you actually develop  
8 your study planning.

9 Q. Well, Mr. Pelletier, I appreciate that, and I want to  
10 get to that point -- I'm going to get to that point  
11 with some additional testimony from you. But my  
12 question to you is, based on the standards that have  
13 been set up in this final release of Guidelines from  
14 the State of New York, would this Project site meet the  
15 criteria or a criterion in 2(b), and therefore come  
16 under the expanded pre-construction studies?

17 A. (Gravel) I would -- I don't think that's a "yes" or  
18 "no" answer, because we're talking New York, that is  
19 dominantly -- or, predominantly open agricultural

20 fields, with scattered, sporadic mountain ridgelines.  
21 Whereas, in New Hampshire, we're talking about a  
22 mountainous state, which is separate and apart from  
23 this. So, in New Hampshire, a mountain may not be a  
24 unique feature, like in New York.

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1 CHAIRMAN GETZ: Well, is your  
2 hypothetical, "what if the New York Guidelines applied in  
3 New Hampshire?"

4 MS. LINOWES: That would be a better way  
5 of applying it.

6 CHAIRMAN GETZ: What if?

7 BY THE WITNESS:

8 A. (Pelletier) Again, and I'm not really trying to avoid  
9 the question here, but it really is something that you  
10 would have a discussion with the agencies, determine  
11 whether or not it's necessary. And, my guess is that  
12 they would be looking for a single year, a two-season  
13 spring and fall survey.

14 A. (Gravel) And, then, if the results showed something  
15 different than other studies, they would require  
16 additional years.

17 BY MS. LINOWES:

18 Q. Mr. Pelletier, how many days of raptor migration survey  
19 did you do?

20 A. (Pelletier) Which -- In the Fall of '07, I believe it  
21 was 11.

22 A. (Gravel) Eleven. Eleven days.

23 Q. Eleven days? I want to draw your attention to Page 10  
24 of the standards or these guidelines. These are,

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1 again, under that "Expanded Pre-Construction Studies",  
2 there's (a), (b), (c), (d), goes through a series of  
3 studies. And, it says here, in the middle of the first  
4 paragraph there, under "Raptor Migration Surveys",  
5 "Surveys should be conducted from one or more prominent  
6 locations within the project area during spring and  
7 fall migration periods (March 1 to end of May;  
8 August 15th to December 15th)." So, August 15th to  
9 December 15th, and I believe you said "11 days, from  
10 September 5th to October 15th", is that correct?

11 A. (Pelletier) I believe that was the range.

12 Q. What 11 days did you the pick?

13 A. (Gravel) The majority were during the first three weeks  
14 of September, when peak raptor migration is expected to  
15 occur in New Hampshire.

16 Q. Is that documented anywhere in your prefiled testimony  
17 or reports?

18 A. (Gravel) Yes. I don't know exact page number, but it's  
19 also documented in your prefiled testimony as well.

20 Q. So, the actual days, the actual days that you were on  
21 site are documented? I know the number of days, but --

22 A. (Gravel) Oh, the actual days, yes.

23 A. (Pelletier) It's in the Appendix.

24 A. (Gravel) It's in Figure 4-3, on Page 35 of the Fall

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1 2007 report. Which is -- I'm not sure what Appendix  
2 number it is in the Application.

3 Q. I don't know if I have easy access to it. Hold on a  
4 second.

5 A. (Gravel) In Appendix 21.

6 Q. So, do you have it in front of you? Can you tell us  
7 the days?

8 A. (Gravel) Yes, I can.

9 MR. IACOPI NO: For the Committee,  
10 Appendix 21 is in Volume 3 of the Application. And, for  
11 the record, that's Petitioner 1.3. What page were you  
12 referring to, Mr. Gravel?

13 WITNESS GRAVEL: Page 35, Figure 4-3.

14 BY THE WITNESS:

15 A. (Gravel) What days? 9/5, 9/6, 9/7, 9/13, 9/14, 9/19,  
16 9/20, 10/1, 10/2, 10/9, and 10/15, 2007.

17 BY MS. LINOWES:

18 Q. Okay. Mr. Pelletier or Gravel, do raptors fly on  
19 September 8th?

20 A. (Pelletier) I'm sure they do.

21 Q. On September 9th?

22 A. (Pelletier) Again, this is a survey of raptor  
23 migration. It is not meant to be a census.

24 Q. What is the purpose of it?

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1 A. (Pelletier) What we're doing is picking days that  
2 migration is very likely to occur because of the  
3 presence of fronts going through. And, again, it's  
4 during the peak time, to try to get an understanding of  
5 the assemblage of different species that are flying.  
6 We're not picking out any particular species or  
7 focusing on that. So, what we're trying to do is get

8 an understanding of what kind of numbers, what kind of  
9 patterns of raptor migration we're seeing in the  
10 project area.

11 Q. Mr. Pelletier, what time during the fall migration  
12 period do eagles fly?

13 A. (Pelletier) The eagles are later than this, this date  
14 right here.

15 Q. Later than October 15th?

16 A. (Pelletier) Yes.

17 A. (Gravel) They can be later than that date, but they can  
18 also occur near, within that, this time frame.

19 Q. What is typical?

20 A. (Gravel) It can be --

21 A. (Pelletier) It's as late as sometimes even into  
22 December, but typically in November is when you're  
23 seeing some of the later hits.

24 Q. So, you really weren't interested in looking for eagles

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1 or other kinds of raptors that might fly during  
2 different periods outside of the range of September 5th  
3 and October 15th?

4 A. (Pelletier) Again, there are a number of factors in  
5 pulling together things. To say we're "not interested"  
6 I think is a little disingenuous. But you're trying to  
7 characterize potential impacts on these resources, and  
8 the known threats to --

9 Q. I am or you are? Who is?

10 A. (Pelletier) No, I'm sorry. My "you" is the "us", the  
11 "we". It's, essentially, when you're doing these, if  
12 you're properly doing these things, you want to

13 characterize migration. And, if you start to see a  
14 threat, if you start seeing a problem, then it's  
15 appropriate to be ramping up the types of surveys.  
16 And, what --

17 Q. What do you mean by "starting to see a problem"?

18 A. (Pelletier) If you're seeing high numbers, if you're  
19 seeing something unusual, something that you haven't  
20 seen in that, at sites where there is documented --  
21 when there's a very low raptor mortalities have been  
22 documented. And, again, --

23 Q. Are you talking post-construction? I'm not following  
24 what you're saying.

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1 A. (Pelletier) Let me get straight to the point. That  
2 raptor migration has been observed at a number of  
3 different sites in the Northeast, and both  
4 pre-construction and post-construction. How these  
5 raptors migrate through an area is of particular  
6 importance. So, you're looking for areas where they  
7 are funneling in concentrations. That where you see  
8 the HMANA sites. That's where you see people  
9 observing, because they're watching, and it's a great  
10 place because there is raptor migration going on there.  
11 If we see those types of patterns happening at our  
12 project area, then it will be documented.

13 Q. And, what is -- When you see what kind of pattern?  
14 You're seeing a lot of birds flying over right now, if  
15 you were out there and you happened to see a high level  
16 bird count, then you would be concerned? I don't  
17 understand what you're talking about?

18 A. (Pelletier) If you were to compare the types of data  
19 that you'd find for the days that we were out on these  
20 days with the HMANA sites, I'd suggest that you'd find  
21 that much, much higher raptor surveys would be in those  
22 other points.

23 Q. Okay.

24 A. (Pelletier) And, again, this is a survey. And, this is  
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1 not a census of all of the birds going by. And, then,  
2 I'm going to, you know, cut, again, right to the chase,  
3 too, is that the mortality that's observed at wind  
4 farms is less than is -- is on the order of 2/100ths  
5 per turbine per year, 3/100ths. I mean, it is not  
6 shown to be a real threat.

7 Q. Mr. Pelletier, I just want to get back to the  
8 pre-construction studies. So, you sampled 15 days out  
9 of a multi-month migration period, and made a  
10 determination on the basis of that that this was a "low  
11 raptor site" --

12 A. (Gravel) I think that --

13 Q. -- "migration site, is that correct?"

14 A. (Gravel) No, it's not correct, because it's not -- that  
15 determination was not based solely on the basis of that  
16 one survey. We take into account raptor mortality,  
17 like Steve was just explaining, noted other studies, as  
18 well as what we see at other -- other surveys, and  
19 HMANA Hawk Watch sites. So, it's not just that one  
20 basis, it's all things connected.

21 Q. So, you made a predetermination that, since raptors  
22 don't die at wind turbine facilities, you won't take a

23 lot of -- make a lot of effort in evaluating how many  
24 may fly over Kelsey Mountain?

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1 A. (Pelletier) We also -- sorry. We also take into  
2 account the type of surveys that we've done, again, at  
3 -- literally, we've done probably over 100 seasons of  
4 -- well over 100 seasons of different types of surveys.  
5 And, on, by far, the greatest number of raptor  
6 migrations is -- I'm sorry, the raptor days that we're  
7 out there observing, is usually on the order of about a  
8 dozen per season. So, it's not -- it's not an  
9 unfounded number here, 11, to be doing for a single  
10 season. This is not an anomaly.

11 Q. What is not an anomaly?

12 A. (Pelletier) The number, 11, 11 days.

13 Q. Okay. I'm going to direct your attention then back to  
14 that letter from Fish & Wildlife Service, IWA-X-20. I  
15 don't think that they -- this would be the second page,  
16 second paragraph.

17 A. (Pelletier) I'm sorry, which document again?

18 Q. This is IWA-X-20. This is the second paragraph. Now,  
19 I realize that I'm talking about daytime migrants,  
20 which are the raptors. I'm talking about -- I will be  
21 getting to the radar studies as specific to the  
22 nighttime migrants, correct?

23 A. (Pelletier) That's correct.

24 Q. And, then, have you the acoustical studies on bats,

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1 correct?

- 2 A. (Pelletier) That's correct.
- 3 Q. So, there's three different types of studies. In all  
4 three cases, but I will cite this one paragraph, last  
5 sentence of the second paragraph of the second page, "A  
6 much more expansive effort as identified is needed to  
7 characterize the spring and fall migration in and near  
8 the areas potentially subject to wind turbine  
9 development." I believe that HMANA policy also  
10 supports that, would support that if they had known  
11 what you were doing, do you agree?
- 12 A. (Pelletier) No, I don't agree. I mean, I don't know  
13 what HMANA thinks. HMANA operates their sites. We use  
14 their data. And, we are appreciative of the fact that  
15 they've got out there collecting some really good  
16 comparison data for us. HMANA is not typically  
17 involved with helping to develop study plans for  
18 surveys.
- 19 Q. Let me go to one other document. This is one I did not  
20 bother to make a copy for everyone. I just want to  
21 make -- cite a couple of quotations from this. This is  
22 from Bat Conservation International. Are you familiar  
23 with Bat Conservation International?
- 24 A. (Pelletier) Yes, we are.

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- 1 Q. And, do you know Dr. Ed Arnette?
- 2 A. (Pelletier) Yes, ma'am.
- 3 Q. And, how would you characterize him in terms of an  
4 expert level?
- 5 A. (Pelletier) Ed runs a -- I would consider Ed to be a  
6 bat expert, yes.

7 Q. You would call him that? Okay. He makes a point here,  
8 and I'll read this: "Bats are long-lived and have  
9 exceptionally low reproductive rates. Population  
10 growth is relatively slow, and their ability to recover  
11 from population declines is limited." Do you agree  
12 with that?

13 A. (Pelletier) Yes, I do.

14 Q. Now, and this, by the way, is a speech, testimony he  
15 gave before the House Committee on Natural Resources.  
16 This is at a subcommittee of that in the House of  
17 Representatives. He has one section where he talks  
18 about pre-construction studies, okay. You -- He talked  
19 about Fish & Wildlife Service studies, recommendations,  
20 talked about HMANA, talked about the Society of  
21 Mammalogists, talked about the New York DEC, Department  
22 of Environmental Conservation. He states  
23 "Pre-construction studies have lacked consistent  
24 implementation of method and often are fundamentally

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1 flawed in a number of ways. They're typically short  
2 duration, lack clearly stated objectives, and are under  
3 funded to adequately evaluate true risk to bats and  
4 other wildlife." Do you agree with that?

5 A. (Pelletier) I have seen some very poorly designed and  
6 poorly funded studies, correct.

7 Q. He states "Unfortunately, past and current efforts to  
8 acoustically monitor bat activity", that's what you  
9 did, correct, "acoustically monitor bat activity"?

10 A. (Pelletier) It's also something that Ed relies on quite  
11 a bit himself.

12 Q. Okay. "Unfortunately, past and current efforts to  
13 acoustically monitor bat activity prior to construction  
14 of turbines may suffer from flaws in study design,  
15 including small sample sizes, poor temporal and spatial  
16 replication, an inappropriate inference because  
17 limitations and assumptions were not understood or  
18 clearly articulated." Do you agree that that's a  
19 problem?

20 A. (Pelletier) As you have pointed out with almost all of  
21 your documents here, they are all very general  
22 statements, and you certainly have to agree with those.

23 MS. GEIGER: Excuse me, Mr. Chairman.

24 Would it be possible for Ms. Linowes to provide us with a  
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1 copy of what she's reading from at some point?

2 MS. LINOWES: Yes, I absolutely can. I  
3 didn't think it would be necessary, but I would be happy to  
4 do that.

5 MS. GEIGER: Okay. Thank you.

6 BY MS. LINOWES:

7 Q. Okay. But I take it from your comments that you're not  
8 -- you don't fall into that category?

9 A. (Pelletier) I would agree that there are a lot of  
10 poorly designed and poorly operated and poorly funded  
11 studies that have been done out there. We spend quite  
12 a bit of time designing our studies. And, we learn  
13 from our studies, and we put a lot of effort into our  
14 studies. And, we're standing by the results that we've  
15 got.

16 Q. Okay. There's one more point I wanted to raise

17 actually with the -- with regard to the bats. This is  
18 on -- under the DEC of the New York Guidelines, with  
19 regard to bats. It says "In particular, a proposal to  
20 site a wind energy project in proximity to a Indiana  
21 bat's hibernaculum, wildlife concentration area, along  
22 a coastline or on a prominent ridgeline will result in  
23 a recommendation to conduct expanded pre-construction  
24 studies." Okay? And, then, I -- there was a question

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1 I had for you in regard to this Project.  
2 A. (Pelletier) Where are you reading that? I'm sorry.  
3 Q. I'm sorry. That was on Page 5 of the New York DEC  
4 Standards and Guidelines, under (d), "a proposal to  
5 site a wind", last sentence of that paragraph.  
6 A. (Pelletier) Yes, I got it. Thank you.  
7 Q. See that? Okay. Then, and I apologize for jumping  
8 around, but these are all kind of very related to each  
9 other. Bringing it back to this Project site, and on  
10 that letter from Vernon Lang to Josh Brown, IWA-X-20,  
11 data dated April 23rd. On the second page, the last  
12 sentence, it says "We understand that caves may exist  
13 on the west side of Mount Kelsey between Wells and  
14 Watkinson Brooks. This should be confirmed and, if so,  
15 surveyed to determine if they are used as den sites or  
16 hibernacula sites and if so by which species." Do you  
17 see that?  
18 A. (Pelletier) I don't think this is the right document.  
19 Q. IWA-X-20.  
20 A. (Gravel) Yes, we see that.  
21 Q. Okay. Did you confirm the location of those caves?

22 A. (Gravel) Not the location, we did inventory studies  
23 within the Project area, but not -- and it didn't  
24 encompass those. So, those weren't present within the  
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1 Project site.  
2 Q. Okay. According to the DEC Guidelines, again, from the  
3 State of New York, they state a hibernacula "within 40  
4 miles".  
5 A. (Gravel) For Indiana bats.  
6 Q. That's true.  
7 A. (Gravel) There are no --  
8 Q. No other bats?  
9 A. (Gravel) There are no Indiana bats in New Hampshire,  
10 according to U.S. Fish & Wildlife Service.  
11 Q. There are "Myotis", I believe it's -- is that how you  
12 pronounce it?  
13 A. (Pelletier) Myotis.  
14 Q. "Myotis".  
15 A. (Pelletier) There are Myotis.  
16 Q. And, an acoustical bat study would not identify an  
17 Indiana bat from a particular Myotis?  
18 A. (Pelletier) It would be -- Yes, you're correct.  
19 Q. So, you don't --  
20 A. (Pelletier) The way we're operating our surveys, it  
21 would be very difficult if you could distinguish an  
22 Indiana bat from other Myotis.  
23 Q. Okay. So, you're making an assumption, maybe an  
24 informed assumption, but not a final determination?

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1 A. (Pelletier) That's correct.

2 MS. LINOWES: All right. I think that  
3 I'm done with that line of questioning, let me just check.  
4 All right. And, Mr. Chairman, I just have another line of  
5 questioning I'm going to go down. I don't know if I  
6 should just continue or --

7 CHAIRMAN GETZ: Yes. Please.

8 MS. LINOWES: It's not much more.

9 CHAIRMAN GETZ: And, is it, when you say  
10 -- is that your, the "other line", is your last line?

11 MS. LINOWES: My last line of  
12 questioning, not my last question though.

13 CHAIRMAN GETZ: Okay.

14 BY MS. LINOWES:

15 Q. Mr. Pelletier, I don't think you were here yesterday,  
16 but you make a similar statement in your prefiled,  
17 February 23rd prefiled. Mr. Lyons made a statement,  
18 and I'm going to paraphrase here, that "building this  
19 Project, in conjunction with the proposed Mitigation  
20 Plan", which we'll learn more about tomorrow, "to  
21 protect the land around the turbines on Kelsey, is a  
22 better option environmentally than commercial timbering  
23 of the site." And, I believe -- And, you made a  
24 similar statement, on Page 7 of your testimony, you

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1 state "The proposed mitigation plan thereby improves  
2 the currently threatened status quo of the project area  
3 by maintaining large landscape-level blocks of intact  
4 high elevation forest habitat in perpetuity". Is that

- 5 correct?
- 6 A. (Pelletier) Yes.
- 7 Q. Mr. Pelletier, how much blasting goes on during a
- 8 timber cut?
- 9 A. (Pelletier) For a timber harvest, to be honest with
- 10 you, I'm not sure that I've ever seen any blasting
- 11 associated with a timber harvest. Actually, I have. I
- 12 can think of several sites where there's been blasting.
- 13 But, typically, it's not done.
- 14 Q. So, you would agree that the level of blasting that
- 15 potentially can happen at this site to build the Wind
- 16 Project is more than what someone who is timbering
- 17 would do?
- 18 A. (Pelletier) I don't know that there's any blasting
- 19 that's going to be needed out there. I'm not
- 20 suggesting that it's -- I guess I don't know of the
- 21 engineering specs right now.
- 22 Q. Okay. Well, we'll take that up with Mr. LaFrance
- 23 tomorrow then. I want to -- actually, how much
- 24 timbering, when one is timbering, how much is one

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- 1 involved in building 12 miles of new road, capable of
- 2 handling hundreds of thousands of tons of equipment
- 3 within a short period of time, say, six months? Is
- 4 that typical of timbering activities?
- 5 A. (Pelletier) The road construction will be very similar
- 6 to what would be involved in creating a haul road,
- 7 that's going to be used to haul 80,000 pounds of lumber
- 8 out of there on a daily basis. Those are --
- 9 Q. Is that how heavy the turbines are?

- 10 A. (Pelletier) No, those are the same trucks, those same  
11 roads and the same road beds can support the equipment  
12 that's going to be -- being brought up for the  
13 windfarm, though.
- 14 Q. Okay. Then, I'd like to draw your attention to the two  
15 IWA-X-23a and b, if I may.
- 16 A. (Pelletier) That's these?
- 17 Q. These are two photographs.
- 18 A. (Pelletier) Yes.
- 19 Q. Let me go -- I have two photographs. One is a winding  
20 road, slightly, about midway of the tree line, almost  
21 to the top of the tree line, and the other one is --  
22 looks like a fairly significant ledge cut for a road.  
23 Do you recognize this site?
- 24 A. (Pelletier) I don't. Do these --

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- 1 A. (Gravel) We might not have the last picture you just  
2 held up.
- 3 Q. Well, which is the --
- 4 A. (Gravel) The winding road one.
- 5 Q. I may have --
- 6 A. (Pelletier) We've got these two ([indicating]).
- 7 Q. Oh, you know what? All right. Let me, there was a --  
8 (Atty. Iacopino handing photographs to  
9 the witnesses.)
- 10 MS. LINOWES: Do you have this picture?  
11 CHAIRMAN GETZ: Ms. Linowes, are these  
12 the two?  
13 MS. LINOWES: Yes, those are exactly the  
14 right ones.

15 BY MS. LINOWES:

16 Q. Okay. Mr. Pelletier, did your company do the  
17 pre-construction bird/bat on Kibby Mountain?

18 A. (Pelletier) We did the bird and bat studies, correct.

19 Q. This is Kibby Mountain. Do you know where Kibby  
20 Mountain is located?

21 A. (Pelletier) I do.

22 A. (Gravel) Yes, we do.

23 Q. Where is it?

24 A. (Pelletier) It's in the western mountain region, just a

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1 little bit north of --

2 Q. Of Maine?

3 A. (Pelletier) It's in the western regions, but a little  
4 north of Sugar Loaf.

5 Q. Again, in the State of Maine?

6 A. (Pelletier) That's correct.

7 Q. And, I did check with Dr. Publicover, you can correct  
8 me on this, but the elevation of Kibby Mountain I  
9 believe you said is around "3,000 feet", Kibby?

10 DR. PUBLICOVER: I'm not on the witness  
11 stand.

12 MS. LINOWES: I'm sorry. I'm sorry.

13 BY MS. LINOWES:

14 Q. It's about 3,000 feet?

15 CHAIRMAN GETZ: Subject to check.

16 MS. LINOWES: Okay.

17 BY MS. LINOWES:

18 Q. So, this first picture, this would be the one with the  
19 road, and the people standing in the road. Do you see

20 that? Would you say that there's a significant amount  
21 of blasting that went on there?

22 A. (Pelletier) Yes.

23 Q. Would you say that's about a 50-foot ledge cut?

24 A. (Pelletier) It's hard the say. But I'm not going to  
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1 disagree, it's a large blast and cut. But, again, is  
2 that what's going to occur on our Project area? I  
3 don't know that.

4 Q. I don't either. But would you agree that the terrain  
5 is similar?

6 A. (Gravel) We would agree the elevation is similar.

7 Q. Okay. So, your testimony, Mr. Pelletier, is that  
8 timber cuts are far more damaging to high elevation  
9 habitat than what you see in this picture?

10 A. (Pelletier) I would say that my testimony said that  
11 this had anything to do with these pictures.

12 A. (Gravel) You're talking about timber harvests,  
13 land-clearing.

14 Q. Versus road building.

15 A. (Pelletier) Most road building that you're seeing,  
16 particularly in the Project area, you're not seeing  
17 this kind of -- you're not seeing this kind of  
18 activity. It may have to occur in some places, and,  
19 you know -- but, again, I don't know that.

20 Q. Okay. So, I should hold those questions for Mr.  
21 LaFrance when we look at the plans. Okay. I'll do  
22 that. Then, let me ask you this question. Mr. Decker  
23 earlier today had stated that it was -- it took a long  
24 time to get the met tower erected on Kelsey and

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1 Dixville, because Noble Environmental was so concerned  
2 about impacting the wildlife habitat that was up there  
3 and the sensitivity of the area. And, they helicopter  
4 -- I think he said something about "helicoptering in"  
5 and "hand carrying equipment", "cutting trees". Were  
6 you here when he talked about that?

7 A. (Pelletier) No, I missed that.

8 A. (Gravel) I'm aware of it.

9 Q. You're aware of it?

10 A. (Gravel) Yes.

11 Q. So, that's quite a level of concern for a met tower,  
12 when you compare the size of a met tower to a wind  
13 turbine, wouldn't you agree?

14 A. (Gravel) I think that the point of that was based on  
15 timber harvesting practices now. And, when you build a  
16 road to the top, without proper drainage and erosion  
17 control parameters, like that would be in place with  
18 these roads, you have a lot of soil erosion, that just  
19 travel down, freely down the mountain, without these  
20 erosion control plans that will be set forth on a  
21 permanent road. And, I think that was the reason for  
22 that. And, as far as I'm aware, that was the --

23 Q. Are the reason for what? I'm not following you. The  
24 reason for what?

[WITNESS: Pelletier/Gravel]

1 A. (Gravel) The reason for helicoptering in equipment and  
2 hand-cutting everything was to minimize impacts from  
3 building a road from the bottom to the top, to get a

4 temporary road, I should say, to get equipment up  
5 there. Because temporary roads do not follow the best  
6 management standards, and are not putting in erosion  
7 control measures. So, they're used to get up there,  
8 put the structure up, and left to revegetate. But,  
9 during that period, there's a lot of erosion. And, I  
10 think -- I believe that there was a condition of the  
11 met tower permit by New Hampshire Fish & Game to  
12 minimize impacts.

13 Q. So, I guess then let me make sure I understand. We can  
14 build 36-foot wide roads as part of the plan, and all  
15 of the side slopes and everything that's related to  
16 that, as long as we put in all the erosion control  
17 measures, then it will be environmentally safe and  
18 better than timber cutting?

19 A. (Gravel) I mean, in some cases.

20 A. (Pelletier) Again, they're building, my understanding,  
21 is -- I thought it was 30-foot wide roads. But, you  
22 know, and, at the end of the day, those roads are  
23 narrowed down to 12 feet. I'm not sure that the  
24 projects here, and I don't know this, but the example

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1 that you're showing here had the same sort of  
2 fragmentation concerns that we have this, with the Coos  
3 project. And, again, I'm not sure of that heightened  
4 level of awareness that we've gone through on this  
5 particular -- in our review of this Project.

6 So, you know, in terms of using  
7 helicopters and things like that, again, it's -- a lot  
8 of times it's a lot more cost-effective. We use

9 helicopters, we've used them to get our own radar  
10 equipment on top of mountains, instead of trying to  
11 drag up -- create roads, build roads, it's just that  
12 much more. When you're doing your initial  
13 reconnaissance of a site, you're trying to get in there  
14 as easy as possible, and sometimes a helicopter is the  
15 most efficient way of doing it.

16 Q. Well, then, -- Well, that's very intriguing then.  
17 Would that be worth suggesting that Noble construct  
18 this Wind Project using helicopters? It's been done.

19 A. (Pelletier) Hauling, you know, a crate of radar  
20 equipment, versus hauling up, using -- with one smaller  
21 helicopter, versus using a much larger helicopter, with  
22 the type of tonnage they have to need for the  
23 different, the nacelles, and the different turbine  
24 sections, I mean, that's an apples and orange

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1 comparison right there.

2 Q. So, it's out of the question?

3 A. (Pelletier) No, I'm not saying -- nothing's out of the  
4 question. It's how much are you investing for it.

5 Q. And, I want to -- I have one more exhibit to talk to  
6 you about, and this is relating back to the studies  
7 that your condition has done, pre-construction studies  
8 that your company has done. I wonder if you could look  
9 at IWA-X-29, this would be the last exhibit I'm  
10 referencing. This is a breakdown of what MMS, Minerals  
11 Management Service, had identified as available  
12 pre-construction studies for on-shore wind facilities  
13 for birds and bats, or at least birds. And, your

14 company's name is listed I believe 40 times here. And,  
15 you had stated, in one document, I believe it was  
16 stated that you had done "69", let me find that, in one  
17 letter, I believe it was the number "69". Does that  
18 ring a bell, "69 surveys"?

19 A. (Pelletier) We talk about this all the time, "how many  
20 projects have we got?"

21 Q. Right. I've come across three numbers, and I think one  
22 of them was "40", and that was specifically to  
23 Mr. Gravel's experience. And, then, there was -- you  
24 said "over 100", and then I saw "69" somewhere else.

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1 A. (Pelletier) Let me make sure we're again making proper  
2 comparisons. We've got quite a number of different  
3 studies that we've done, and some of these studies are  
4 radar studies alone, some are bat studies alone, some  
5 are combined. So, we need to make sure of that  
6 comparison. And, again, as we're driving up here,  
7 we're trying to figure out "Is it 120?" "Is it 140?"  
8 "How many of them are publicly available today?" So,  
9 that number keeps shifting in our heads. But the  
10 bottom line is, yes, we have a number, we've done a  
11 number of studies that are publicly available.

12 Q. That are, okay. So, looking down at this list, does  
13 this look fairly comprehensive? You know, it's too  
14 many to go through right now, but it's --

15 A. (Pelletier) It's a fairly representative list.

16 Q. Okay.

17 A. (Gravel) I think Attachment 5 in our supplemental is  
18 more comprehensive.

19 Q. Are those publicly available?

20 A. (Gravel) Yes.

21 Q. Okay.

22 A. (Gravel) It's in our supplemental testimony, Attachment  
23 5.

24 Q. Okay. I'll look at that. Now, of these projects, for  
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1 instance, the Deerfield Project done in the Fall of  
2 2005, and it represents -- there are multiple studies.  
3 Do you consider each, even though that's one project  
4 site, do you consider that multiple studies?

5 A. (Pelletier) Different seasons of study. We'll count a  
6 different season as a different study. It's a  
7 different data set.

8 Q. Okay.

9 A. (Gravel) Are you talking about the Fall of '04 though,  
10 Fall of 2004?

11 Q. Yes. I know that there were two ridgelines there, too?

12 A. (Gravel) Those are three different radar survey  
13 locations.

14 Q. Okay. Is that how you would characterize a study?

15 A. (Pelletier) It's a set, a complete set of data, that's  
16 correct. Yes.

17 Q. Okay.

18 A. (Pelletier) And, we can use that, and what you try to  
19 do is collect your data so that you can compare it to  
20 other studies.

21 Q. Well, my question for you is, how many of the projects  
22 that you've actually performed pre-construction studies  
23 on have actually been built?

24 A. (Pelletier) Again, this is kind of a slow process here,  
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1 so some of them aren't really turnkey. But Mars Hill's  
2 on there. Is Stetson on there?

3 Q. There, I guess I should rephrase --

4 A. (Pelletier) Mars Hill would be one that's been built.  
5 Stetson's on there, that's been built.

6 A. (Gravel) Lempster, yes.

7 Q. I should rephrase that question. The question really  
8 is "built and had at least one fall season of  
9 post-construction studies"?

10 A. (Pelletier) At Mars Hill, there's been two years now.  
11 And, we're conducting studies at -- I don't know if we  
12 started at Stetson.

13 A. (Gravel) No, I think Mars Hill is the only one publicly  
14 available.

15 Q. Okay. I guess my question was the validation of the  
16 pre-construction. I mean, I believe you state in your  
17 testimony that "pre-construction studies are not  
18 indicative of post-construction results"?

19 A. (Gravel) That's correct.

20 A. (Witness Pelletier nodding affirmatively).

21 Q. And, that you have found that, in cases where you  
22 stated there would not be a large bat kill, in fact, it  
23 was found, maybe not in your studies, but, in fact, it  
24 was found to be a significant bat kill, as in the case

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1 of Maple Ridge in New York?

- 2 A. (Gravel) We didn't do any of the pre-construction work  
3 there.
- 4 Q. I understand that. But is that not the case?
- 5 A. (Gravel) In the case with ours, it was actually a lot  
6 lower than our pre-construction studies suggested.
- 7 Q. Okay.
- 8 A. (Pelletier) Quite a bit lower.
- 9 Q. Was that --
- 10 A. (Pelletier) That's at Mars Hill.
- 11 Q. I would just ask the question, if anyone independent of  
12 the wind industry reviewed the methodology?
- 13 A. (Gravel) Yes.
- 14 A. (Pelletier) Yes, the agencies reviewed it.

15 MS. LINOWES: All right. Thank you, Mr.  
16 Chairman. No more questions.

17 CHAIRMAN GETZ: Okay, let's take stock.  
18 Mr. Roth, do you know how much cross-examination you may  
19 have for this panel?

20 MR. ROTH: Maybe an hour, an hour and a  
21 half. It's more than I want to do now.

22 CHAIRMAN GETZ: There's probably others  
23 that share that view.

24 [Laughter]

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1 CHAIRMAN GETZ: Tomorrow I think the  
2 notion was to begin with LaFrance/Lobdell panel first  
3 thing, is that the preferred approach or should we take up  
4 with this panel again first thing? Is there --

5 MR. PATCH: That's fine with us.

6 MR. MULHOLLAND: Mr. Chairman, we've

7 been delayed many times by the Noble people. The more we  
8 have to actually have them sign, the better it is to be  
9 able to effectively approach this issue. So, the more  
10 delay we have, the better, for this particular panel. I'm  
11 worried about more delay.

12 MS. GEIGER: Unfortunately,  
13 Mr. Chairman, Mr. Lloyd-Evans I guess is not the only  
14 person that is going to enjoy Hawaii. We have other folks  
15 on our witness list that have travel plans. And, so, it  
16 would be very, very helpful if we could continue with this  
17 panel tomorrow.

18 CHAIRMAN GETZ: Okay.

19 MR. MULHOLLAND: Mr. Chairman, if we  
20 don't have a signed deal by tomorrow, we're going to have  
21 many hours of cross-examination. So, I'm hopeful that we  
22 have it tonight, but it's up to Noble.

23 CHAIRMAN GETZ: Well, let's -- I assume  
24 we're going to have, regardless of what happens, Mr. Roth

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1 has some cross-examination for this panel. What's the  
2 likely length of the cross-examination for LaFrance and  
3 Lobdell panel? Actually, let's go off the record.

4 (Brief off-the-record discussion  
5 ensued.)

6 CHAIRMAN GETZ: Okay. Let's go back on  
7 the record. Okay, we're going to close or recess the  
8 hearing for the evening. We'll resume in the morning with  
9 the Gravel/Pelletier panel. We'll have questions,  
10 cross-examination by Mr. Roth on those issues unrelated to  
11 the Mitigation Plan. And, then, we'll determine in the

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12 morning, we'll see where we are, if we've actually got a  
13 written document, on whether we conclude with this panel  
14 or turn to LaFrance and Lobdell.

15 Is there anything else we need to  
16 address before we recess?

17 (No verbal response)

18 CHAIRMAN GETZ: Hearing nothing, then  
19 we'll see you in the morning.

20 (Whereupon the hearing was adjourned at  
21 5:40 p.m. and the hearing to reconvened  
22 on March 11, 2009, to commence at 10:00  
23 a.m.)

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