

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3 March 11, 2009 - 10:05 a.m.  
4 Public Utilities Commission  
21 South Fruit Street  
5 Concord, New Hampshire DAY 3  
[REDACTED - FOR PUBLIC USE]

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 APPEARANCES:

2 Reptg. Granite Reliable Power, LLC,  
3 and Noble Environmental Power:  
4 Douglas L. Patch, Esq. (Orr & Reno)  
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. Counsel for the Public:  
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5 GRP-DAY3.txt  
 Peter C. L. Roth, Esq.  
 6 Senior Assistant Atty. General  
 New Hampshire Dept. of Justice

7 Reptg. N. H. Fish & Game Division:  
 Evan Mulholland, Esq.  
 8 Assistant Atty. General  
 New Hampshire Dept. of Justice

9 Reptg. the Appalachian Mountain Club:  
 10 David Publi cover  
 Kenneth Kimball

11 Reptg. Industrial Wind Action Group:  
 12 Lisa Linowes

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18 E X H I B I T S

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20 IWA-1	Prefiled Direct Testimony of 21 Lisa Linowes for Industrial Wind Action Group	premarked

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23

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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're back on the record in Site Evaluation  
4 Committee Docket 2008-04, the Application of Granite  
5 Reliable Power for a Certificate of Site and Facility. We  
6 ended yesterday in the middle of the cross-examination of  
7 Mr. Pelletier and Mr. Gravel. We have filed with us this  
8 morning a high level -- High Elevation Mitigation  
9 Settlement Agreement. In the terms of how we proceed  
10 today, let me just make this suggestion and see what kind  
11 of response I get. Well, do you have a suggestion you  
12 would like to preempt my proposal?

13 MR. PATCH: No, I don't want to preempt  
14 you at all, Mr. Chairman. But I'd be happy to make a  
15 suggestion, if you'd like, and, if not I'd be happy to --  
16 because we've talked about it among ourselves.

17 CHAIRMAN GETZ: Well, if the parties  
18 have something to offer, let's hear it.

19 MR. PATCH: Okay. Thank you. Doug

20 Patch and Susan Geiger, for the Applicant. We suggested  
21 or we would suggest jointly that the way to do this would  
22 be we ask Mr. Decker maybe to join this panel and give a  
23 brief overview of the Settlement Agreement this morning.  
24 These two witnesses are aware of the Settlement Agreement,  
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1 and it's sort of integral to their testimony. And, then,  
2 the AMC witness and the Fish & Game witnesses are coming  
3 up sort of later in this process anyway, and they could  
4 answer questions about the Agreement when they're on the  
5 stand. So, that was our thought.

6 MR. MULHOLLAND: Mr. Chairman, one final  
7 point is Fish & Game would withdraw its Exhibit Number 2,  
8 which are similar to the Settlement Agreement, but  
9 slightly different suggested conditions. We no longer  
10 need Fish & Game Exhibit 2.

11 CHAIRMAN GETZ: Okay. I want to make  
12 sure I understood the proposal from Mr. Patch. You said  
13 the AMC witness and the -- did you say the Fish & Game  
14 witness as well?

15 MR. KIMBALL: Yes, we will be modifying  
16 our testimony as well.

17 CHAIRMAN GETZ: Well, I understood AMC.

18 MR. MULHOLLAND: Mr. Chairman, I expect  
19 the Fish & Game witnesses to be here Friday morning to  
20 offer some supplemental testimony in support of the  
21 Agreement, and also to answer questions from the panel or  
22 from the other intervenors.

23 CHAIRMAN GETZ: Okay, that's what that  
24 was. I wanted to make sure that that was still the

1 proposal. I wasn't clear if someone from Fish & Game was  
2 going to testify today about the Settlement. Okay, I have  
3 that clear.

4 MR. ROTH: Mr. Chairman, may I?

5 CHAIRMAN GETZ: Mr. Roth.

6 MR. ROTH: I note that Ms. Linowes isn't  
7 here, and Ms. Keene is also not here. And, it seems to me  
8 that, since we have all just seen this High Elevation  
9 Mitigation Settlement Agreement for the first time a  
10 moment ago, that, I don't have a problem with them coming  
11 on and explaining it to a certain extent now, but I think  
12 it would be proper to have a more meaningful opportunity  
13 to ask questions about it at some point in the future,  
14 especially since we have two parties who aren't even  
15 present at the moment.

16 CHAIRMAN GETZ: Well, and that's my  
17 concern, was we haven't really had a chance to absorb the  
18 Settlement Agreement. And, I was really concerned about  
19 making progress on other issues. You have, Mr. Roth, I  
20 understand some cross-examination of these witnesses  
21 unrelated to the high elevation habitat issues, correct?

22 MR. ROTH: That's correct.

23 CHAIRMAN GETZ: That's you're going to  
24 want to do regardless?

1 MR. ROTH: That's correct.

2 CHAIRMAN GETZ: I guess my preference  
3 would be to get that taken care of. And, we also need to  
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4 address the LaFrance/Lobdell panel today as well. So, I'd  
5 say let's go to Mr. Roth's cross-examination of the panel  
6 on issues unrelated to the high level habitat, and then  
7 see how long that takes, and then see if we want to go to  
8 LaFrance and Lobdell. Because I think it may be better  
9 positioned if we actually heard the summary of the  
10 Settlement Agreement like right after the lunch recess, I  
11 think would be ideal, and then we'll have some time to  
12 have read the Settlement Agreement during the lunch  
13 recess. So, --

14 MR. IACOPI NO: Mr. Chairman, I'll just  
15 point out for the record that Ms. Linowes e-mailed me this  
16 morning, she said she would be here by approximately 10:15  
17 today. And, Ms. Keene had called yesterday and said she  
18 had the flu and would not be here yesterday or today.  
19 Just so you know.

20 CHAIRMAN GETZ: Okay. And, we had --  
21 And, Mr. Iacopi no, she is aware that the Staats/Kelly  
22 panel that she was most interested in cross-examining is  
23 going to be on Friday?

24 MR. IACOPI NO: Yes.

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[WITNESS PANEL: Pelletier|Gravel]

1 CHAIRMAN GETZ: And then she will be  
2 testifying on Friday?

3 MR. IACOPI NO: Yes.

4 CHAIRMAN GETZ: Okay. Thank you. All  
5 right. Is there anything else then, before we turn to  
6 Mr. Roth?

7 (No verbal response)

8 CHAIRMAN GETZ: Hearing nothing, then,  
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9 Mr. Roth.  
10 MR. ROTH: Thank you. Good morning.  
11 WITNESS GRAVEL: Good morning.  
12 STEVEN PELLETIER, Previously sworn  
13 ADAM GRAVEL, Previously sworn  
14 CROSS-EXAMINATION (resumed)  
15 BY MR. ROTH:  
16 Q. I want to call your -- first have you turn your  
17 attention to Exhibit (f) of your supplemental prefiled  
18 testimony -- or, I guess, yes, it is your -- Exhibit  
19 (f) is your -- or, Appendix (f) is your prefiled  
20 supplemental prefiled testimony. But, then, with  
21 respect to that, looking at Attachment Number 4, in the  
22 back, --  
23 MR. HARRINGTON: Excuse me, could you  
24 just repeat what you just said? "Something 4 in the  
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[WITNESS PANEL: Pelletier|Gravel] 10  
1 back"?  
2 MR. ROTH: Attachment 4 to their  
3 supplemental prefiled testimony.  
4 MR. IACOPI NO: That would be Volume 1a,  
5 which I believe is Petitioner 2.1. Appendix (f) to that  
6 document is the supplemental prefiled testimony of this  
7 panel. And, there are some pages attached to the end of  
8 the testimony.  
9 MR. ROTH: And, one of them is  
10 Attachment 4. And, it's a chart that's two pages long, a  
11 page and a half chart. Okay. Does everybody got that?  
12 BY MR. ROTH:  
13 Q. And, it's entitled "Summary of publicly available  
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14 raptor survey results for wind projects". And, did you  
15 prepare this chart?

16 A. (Gravel) Yes.

17 Q. Okay. And, this is -- I take it this is only projects  
18 that are located east of, you know, Lake Erie, is that  
19 fair to say?

20 A. (Gravel) Yes.

21 Q. So that, if -- So, that there conceivably are other  
22 raptor survey results for wind projects that are  
23 publicly available from other parts of the country,  
24 correct?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Pelletier) That's correct.

2 A. (Gravel) Yes.

3 Q. And, that are not summarized here?

4 A. (Pelletier) That is correct.

5 Q. Okay. And, are any of those, in other parts of the  
6 country, ones that you would have participated in  
7 preparing?

8 A. (Pelletier) No, but we've seen results of other  
9 studies.

10 Q. Okay. So, there are studies from West Virginia, the  
11 State of Virginia that are not on this chart, correct?

12 A. (Pelletier) Publicly available, I mean, I believe these  
13 were the publicly available for those projects in the  
14 Northeast, which would have included West Virginia.

15 Q. Okay.

16 A. (Pelletier) I mean, you can speak otherwise, but that's  
17 how I understand it.

18 A. (Gravel) From what we are aware of, yes, this includes  
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19 East, Eastern United States.

20 Q. And, how do you define "Eastern United States"?

21 A. (Gravel) Well, I mean, I would define it down south to  
22 Florida, but this is what we found for publicly  
23 available studies throughout our research.

24 A. (Pelletier) With the types of raptor surveys, too,  
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[WITNESS PANEL: Pelletier|Gravel]

1 things that were going on in the West and Rocky  
2 Mountains, California, even the mid, mid U.S. states  
3 would be different, too. So, we're --  
4 Q. Okay. And, we might get to that, but I'm just trying  
5 to understand the parameters of what it is we're  
6 looking at here. So, when I asked "how you define the  
7 "East"?", I guess I still didn't get an answer. How do  
8 you define the "eastern United States"? Now, Mr.  
9 Gravel said "down to Florida". But when -- I grew up  
10 in Illinois, and, for us, "back East" was Cleveland.  
11 So, I'm trying to understand where you guys think East  
12 goes. And, then, I understand, from New York, people  
13 think the Midwest starts on the other side of the  
14 Hudson River. So, let's get a little bit of accuracy  
15 about what you think.

16 A. (Pelletier) I would say from the western New York over,  
17 where a lot of these studies have actually happened,  
18 and that would be kind of relevant to this project.

19 Q. Okay. So, western New York and east, --

20 A. (Pelletier) Right.

21 Q. -- and then south to the Gulf?

22 A. (Pelletier) South to West Virginia, Maryland.

23 Q. Okay.

24 A. (Pelletier) I'm not really aware of too many other wind  
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[WITNESS PANEL: Pelletier|Gravel]

1 projects that are publicly available that are outside  
2 of that zone also as well.

3 Q. Okay. But there could -- there are projects that even  
4 this developer has in Michigan, correct?

5 A. (Pelletier) I'm not --

6 Q. There are projects in Illinois, Wisconsin, Minnesota,  
7 North Dakota, probably South Dakota, Wyoming, Idaho.  
8 They're all over the country, right?

9 A. (Pelletier) Wyoming and Idaho, those ones we'd clearly  
10 throw out. Some of those projects, again, --

11 Q. I'm not looking for an explanation why they're not  
12 here. I'm just trying to make clear we understand  
13 they're not here, right?

14 A. (Gravel) Yes.

15 Q. Okay. So, projects all over the country that are not  
16 included in your chart.

17 A. (Pelletier) That's right.

18 Q. All right. Now, I noticed that a number of these  
19 projects, a number of these studies were done by  
20 "Woodlot", is that you?

21 A. (Gravel) Yes.

22 Q. And, I notice that there seems to be what I would  
23 consider to be an interesting numerical function here.

24 And, that is that it appears, from this chart, that  
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[WITNESS PANEL: Pelletier|Gravel]

1 Woodlot, that's you, consistently, almost without --

- 2 without exception, does raptor surveys that are  
3 somewhere between 8 and 11 days total. Is that fair to  
4 say from this information, on the average?
- 5 A. (Pelletier) From this information, yes.
- 6 Q. Okay. In fact, wouldn't it -- is it fair to say that  
7 the longest raptor survey that you've ever done is 13  
8 days?
- 9 A. (Pelletier) For publicly, on this chart, that's what  
10 it's saying.
- 11 Q. Okay. And, is it also true that there are other  
12 studies on this chart that you did not do that are for  
13 projects in the Northeast that were, let's look at  
14 Searsburg, in Vermont, 20 days; Wethersfield, Wyoming  
15 County, New York, of course, not Wyoming, the cowboy  
16 place, 24 days?
- 17 A. (Gravel) Yes.
- 18 Q. Wethersfield, another one out in Wyoming County, 34  
19 days -- no, I'm sorry, 24 days; 50 days in Chateaugay.  
20 Do you guys not like to do these?
- 21 A. (Pelletier) Can I explain how the process works? And,  
22 we touched on it yesterday, and I just want to make  
23 sure we're clear here. Is that there are protocols,  
24 and these protocols are evolving on a state-by-state
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[WITNESS PANEL: Pelletier|Gravel]

- 1 basis and, you know, federally. And, they continue to  
2 change as we gather more and more information. And,  
3 the protocols for a test, for a study at any one site  
4 is usually worked out with the agencies beforehand.  
5 And, what happened in this instance here, study plan,  
6 raptors were not even something that the State -- that

7 the New Hampshire Fish & Game actually were looking for  
8 involvement for. We pulled together a study plan that,  
9 you know, their interest was Martin. And, that was  
10 predominantly --

11 Q. Okay. I'll ask you about what agency approached you.  
12 But, so, in 24 studies that you did, I think I counted  
13 them correctly, in the Northeast, between 1996 and  
14 2006, and you, according to your methodology, you've  
15 never done more than 13 days of raptor survey?

16 A. (Gravel) Yes.

17 Q. And, that was, in each of those instances, did you  
18 actually go and get concurrence from a state agency  
19 that says "only do 10 days"?

20 A. (Gravel) Yes.

21 Q. Only do -- isn't there one that's seven days, four days  
22 -- no, that's somebody else. Sorry. I didn't mean to  
23 do that.

24 A. (Gravel) Yes. May I explain?

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[WITNESS PANEL: Pelletier|Gravel]

1 CHAIRMAN GETZ: Yes, let's make sure  
2 we're getting this on the record, because I don't know if  
3 Mr. Patnaude is able to catch the talking over. But let's  
4 make sure we have some break between questions and  
5 answers.

6 BY THE WITNESS:

7 A. (Gravel) These studies that you referred to that have  
8 greater than 12 studies or study days, you'll notice  
9 they're also early studies. Since we started doing  
10 these raptor surveys, survey effort has decreased. For  
11 example, Vermont, we originally, at the Deerfield

12 Project, we were originally planning on doing 20 days,  
13 and they knocked that back down to half that amount.

14 BY MR. ROTH:

15 Q. So, who is they?

16 A. (Gravel) Vermont, Agency of Natural Resources.

17 Q. Okay. Now, you said that they're generally getting  
18 lower, but I look at the one where the most days of  
19 study that was ever done was 50 days, and that was in  
20 2003. That's not that long ago.

21 A. (Gravel) Nearly --

22 A. (Pelletier) 2003 is -- no, go ahead.

23 A. (Gravel) Nearly six years ago.

24 A. (Pelletier) We have -- And, that's the whole business  
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[WITNESS PANEL: Pelletier|Gravel]

1 behind for the wind energy. And, what we've learned  
2 over, for raptors, the types of tools that we're using  
3 for avian migration, for bats, there's been this  
4 exponential increase of knowledge, and adoption by most  
5 agencies as to how -- what we're learning. There are  
6 still some agencies, for instance, the Pennsylvania  
7 Gaming Commission. They look for almost daily surveys  
8 of raptors, but, at the same time, they don't look for  
9 radar information.

10 Q. Okay.

11 A. (Pelletier) So, there are disparities amongst all these  
12 different agencies as to how they approach these  
13 studies.

14 Q. Okay. I wanted to ask you about your agency approach.  
15 Yesterday, in answering questions from Ms. Linowes, you  
16 said that, you know, you didn't -- you thought that the

17 New York program was interesting as a guideline, but  
18 that basically you went in and you worked it out with  
19 the agency in advance, and that's how you approach  
20 these problems. And, did you go to the New Hampshire  
21 Fish & Game Department for this one?

22 A. (Pelletier) There were letters sent out, and, when we  
23 first got involved with this project, and the dates on  
24 those were --

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Gravel) 2006, November 2006.

2 A. (Pelletier) -- 2006, sent letters to all the agencies,  
3 and the federal agencies and the state agencies here in  
4 New Hampshire, requesting information, anything to be  
5 known about the Project area. And, that's our first  
6 first effort. And, then, based on that, and our own  
7 investigations of what's out there, we develop a study  
8 plan.

9 Q. Okay. But let me stop you there. When you went to the  
10 Fish & Game Department, did you work out a protocol  
11 with them about what was an appropriate study plan for  
12 raptors or migratory birds and bats at the Project  
13 site?

14 A. (Gravel) We provided the opportunity, and went through  
15 what we anticipated conducting the surveys at the site,  
16 based on what we have done elsewhere and the standards  
17 elsewhere, given that New Hampshire doesn't have  
18 guidelines. And, the species of concern that came out  
19 in front was marten, which we did go into detailed  
20 discussions on methodology with them.

21 Q. Okay. So, you did not -- is it fair to say that you

22 did not work out a study plan or a protocol with New  
23 Hampshire Fish & Game?

24 A. (Gravel) It's fair to say that. It's fair to say that  
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[WITNESS PANEL: Pelletier|Gravel]

1 we did not work out a protocol. However, we did  
2 provide an opportunity to --

3 Q. Okay.

4 A. (Gravel) -- to get comments back.

5 A. (Pelletier) And, let me say that we met with them and  
6 had detailed discussions as to "here's what our methods  
7 are about" and "here's some of the results". I mean,  
8 so, there was a number of back-and-forths with the  
9 agency.

10 Q. Okay. But, I think I heard Mr. Gravel say that "there  
11 was not a protocol worked out with New Hampshire Fish &  
12 Game", and I'll clarify it, "for the study of avian  
13 species, birds, bats, raptors." Do you agree with  
14 that, Mr. Pelletier?

15 A. (Pelletier) I have to let Adam answer, because I wasn't  
16 actually sitting at the meetings.

17 Q. Okay.

18 A. (Pelletier) So, I don't know the extent of it.

19 Q. Okay.

20 A. (Pelletier) But I do know that that work is something  
21 that we work out in detail with virtually all other  
22 agencies.

23 Q. But, with the New Hampshire Fish & Game Department, and  
24 I don't want to malign my favorite client, but you did  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 not work out a protocol with them for the study at this  
2 site of birds, bats, avian species, as far as you know?
- 3 A. (Gravel) No, we didn't work out a protocol.
- 4 Q. Okay.
- 5 A. (Gravel) But we provided opportunity to work out a  
6 protocol.
- 7 Q. Understood. So, you then approached -- I assume you  
8 approached the United States Fish & Wildlife Service,  
9 correct?
- 10 A. (Gravel) Yes.
- 11 Q. And, did you attempt to work out a protocol with them?
- 12 A. (Gravel) We provided a letter, and they came back with  
13 their recommendation of three years.
- 14 Q. All right. And, so, the protocol that they wanted from  
15 -- so, the agency in New Hampshire, that's active on  
16 this issue, the protocol they wanted was three years,  
17 and you didn't accept that?
- 18 A. (Gravel) We didn't accept that, because no other  
19 project in the East, Eastern United States, for wind,  
20 has conducted three years of studies for  
21 pre-construction.
- 22 Q. Okay.
- 23 A. (Pelletier) And, let me also add that the U.S. Fish &  
24 Wildlife Service has consistently requested that on a  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 lot of other projects, three years. And, to date, I'm  
2 not aware of any project anywhere that's conducted  
3 three years of post-construction studies.
- 4 Q. Okay. Now, yesterday I heard you mention Vern Lang's  
5 name. And, do you guys have a problem with Vern Lang?

- 6 A. (Pelletier) Not at all.
- 7 A. (Gravel) Not at all.
- 8 Q. Not at all? Okay. And, when -- so, at this point, you
- 9 have you no protocol worked out with the New Hampshire
- 10 Fish & Game Department approving your study plans, and
- 11 you have no protocol worked out with the only other
- 12 agency involved in regulating the involvement of a
- 13 windfarm with avian species, that is the U.S. Fish &
- 14 Wildlife Service. So, is it -- how can you say that
- 15 that, based on the New York information, the New York
- 16 Guidelines, that you go into a jurisdiction, you work
- 17 out a protocol, with the agencies, and then you go
- 18 ahead and do it. How do you -- How do you say that?
- 19 In this case, you really can't, can you?
- 20 A. (Gravel) No, except that we, let me just point out,
- 21 that the guidelines that we keep referring to, from New
- 22 York DEC, were issued in 2009. And, all the
- 23 pre-construction studies that occurred at this site
- 24 occurred during 2006 and 2007. So, these Guidelines
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[WITNESS PANEL: Pelletier|Gravel]

- 1 weren't even exist -- did not exist. So, that what we
- 2 did do was use Vermont Guidelines, which was the only
- 3 New England state at the time that had guidelines for
- 4 wind projects, and we followed that or used those
- 5 Guidelines as a reference, as well as based on a number
- 6 of other states that we worked in.
- 7 Q. Do the Vermont Guidelines, would you have -- if Lisa,
- 8 if Ms. Linowes yesterday had instead asked you about
- 9 the Vermont Guidelines, would you have said "Well, we
- 10 go and work out a protocol with the Vermont agency."

11 Has that been your methodology in the past?  
12 A. (Pelletier) That is our methodology, and it's standard.  
13 And, you know, I guess I -- my concern here is that  
14 there was a work plan that we developed in January of  
15 '07, that was very comprehensive, and included all of  
16 these studies, it included the radar, and it was after  
17 our Fall '06 radar surveys. Again, that those -- that  
18 study plan is something that detailed a lot of the  
19 different metrics. That study plan was discussed with  
20 the agencies at the time when we are getting ready to  
21 do the winter trackings. And, there was a number of  
22 different survey elements to that. It didn't include  
23 raptor surveys, because that, at that time, was not  
24 something that had been identified as an issue. We,

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[WITNESS PANEL: Pelletier|Gravel]

1 nonetheless, we still did a Fall '07 raptor survey.  
2 Now, again, the intention was, at that meeting, and I  
3 didn't attend that meeting, but my understanding was  
4 that the intention of that was solely on "how do we  
5 track marten?" And, that was the big, big issue. And,  
6 there were other issues about vernal pools and things  
7 like that that were brought up. But that was the --  
8 the whole fragmentation piece and the effect on high  
9 elevation species was the precursor.

10 Q. Okay. Now, yesterday, when Ms. Linowes was asking you  
11 about the U.S. Fish & Wildlife guidance document, you  
12 questioned its, I guess, relevance, because of its age.

13 A. (Pelletier) I'm sorry. The federal one, correct?

14 Q. Yes, the federal one.

15 A. (Pelletier) Yes.

16 Q. Is that fair to say that you questioned its -- do you  
17 think it's been discredited because of its age?

18 A. (Pelletier) No. Again, we've learned quite a bit.  
19 There's technical committees that are meeting with, on  
20 a number of different fronts, that each season, and we  
21 attend a lot of these meetings, there's great leaps in  
22 information in what we know, and different approaches,  
23 and different issues come up, and how to attack those  
24 issues. So, 2003, I mean, our first radar study was  
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[WITNESS PANEL: Pelletier|Gravel]

1 done in 2004. And, what we learned from 2004 to 2005  
2 was an order of magnitude of difference. And, each  
3 season, particularly in those first early years, it was  
4 -- there was those types of incremental challenges.  
5 But, right now, things are settling down into a better  
6 understanding. And, I guess I'd even say that there's  
7 a lot of data out there right now that's being  
8 collected above flight heights, as an example, that  
9 we're only now really getting a good understanding of  
10 how birds migrate.

11 Q. Do you know whether the Fish & Wildlife Service has any  
12 new guidelines that we're not telling anybody -- that  
13 we're not telling the Committee about?

14 A. (Pelletier) My understanding is they're developing a  
15 new set of guidelines right now. And, actually, from  
16 my understanding, we've been asked to actually provide  
17 comments to those guidelines.

18 Q. Okay. So, you've seen those guidelines?

19 A. (Gravel) No, we haven't. It's going to be at a formal  
20 -- it's like a forum. They haven't issued a document.

21 They're going to give a presentation and provide a  
22 comment period.

23 Q. So, at the moment, all we have are the 2003 and 2004  
24 documents, is that correct?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Gravel) That's correct.

2 A. (Pelletier) That's right.

3 Q. Okay. And, so, as you testified yesterday in response  
4 to Ms. Linowes' question, it's not out of line for the  
5 U.S. Fish & Wildlife Service to request you to follow  
6 their guidelines, is it?

7 A. (Pelletier) No, I think that's their prerogative.

8 Q. Okay. Thank you. Now, is either of you a member of  
9 the Hawk Migration Association of North America?

10 A. (Gravel) I'm not.

11 A. (Pelletier) I'm involved with a lot of different  
12 groups, but not that one.

13 Q. Not that one? Okay. Now, you guys, you have done a  
14 number of projects, an impressive number. I mean, I  
15 see, you know, since 2004, you know, some 24 different  
16 studies that are publicly available. And, I guess  
17 there -- when I was looking at the cited -- the table  
18 or the sited literature chart, I think there are  
19 actually a few studies that are included in the back  
20 here, in the text part, that are not on your chart, is  
21 that correct? There are a couple of 2007 studies. So,  
22 actually, there may even be more?

23 A. (Pelletier) There are more.

24 Q. That are publicly available, that aren't even on your

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[WITNESS PANEL: Pelletier|Gravel]

- 1 chart?
- 2 A. (Pelletier) That's to be publicly available. We try to  
3 keep that updated as much as possible.
- 4 Q. Yes. So, you've done a lot of these?
- 5 A. (Gravel) Yes.
- 6 Q. And, are there ones you've done in other parts of the  
7 country as well that are not on this chart or do focus  
8 your work here in the Northeast?
- 9 A. (Pelletier) We have projects outside of the Northeast.
- 10 Q. In your many years of doing this, have you ever seen a  
11 project that didn't get built because of bird and --  
12 avian species issues that you discovered?
- 13 A. (Gravel) No, not really. Not specifically the avian  
14 issues, because of the limitations of the technology.  
15 I mean, the limitations of the current technology still  
16 are not very accurate at predicting collision risk.  
17 And, post-construction results are confirming that, the  
18 lack of correlation.
- 19 Q. Okay.
- 20 A. (Pelletier) But, to your question, though, I think I  
21 would go to Altamont as being probably out in  
22 California as a project that has been substantially  
23 revised because of bird issues, avian issues.
- 24 Q. But not because of your work on that, on Altamont?

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[WITNESS PANEL: Pelletier|Gravel]

- 1 A. (Pelletier) No, there is a -- there was siting issues,  
2 foraging issues, construction issues, that have led to  
3 a lot of raptor mortality out there.

- 4 Q. Right, and I want to ask you about that --
- 5 A. (Gravel) And, we did not do any work out there.
- 6 Q. Sorry. Okay. Have you ever, in your many occasions to
- 7 do these studies and make recommendations, have you
- 8 ever concluded, in any instance, that a project is not
- 9 properly sited because of avian species issues?
- 10 A. (Pelletier) Well, this is what's been really good about
- 11 having a large number of studies under your belt, and
- 12 also collecting the information largely all the same
- 13 way. You know, our sense is here that we're seeing
- 14 that migration happens usually 300, 600 meters above
- 15 the ground. And, that's above the ridgelines. And,
- 16 that kind of information is only slowly starting to
- 17 filter into, you know, the knowledge base here. And,
- 18 we're able to see consistently that type of migration
- 19 spring and fall. Now, 100, almost 100 percent, there's
- 20 two studies that we've done, I think, of the number
- 21 that we've had flight -- average flight heights that
- 22 have been less than 300 meters. And, what that's
- 23 telling us is that there is, for avian species, in
- 24 particular, there's a limited risk. And, there is
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[WITNESS PANEL: Pelletier|Gravel]

- 1 going to be some mortality. Raptors, we're seeing,
- 2 again, the post-construction studies, we're seeing a
- 3 very limited amount of mortality. And, those are two
- 4 different types of migration, but that's what we're
- 5 seeing.
- 6 Q. Could you answer the question. Have you ever seen a
- 7 project that --
- 8 A. (Pelletier) No.

9 Q. -- that you had opined -- okay. Thank you. Now, there  
10 was a point made yesterday about -- or, a question  
11 asked by Ms. Linowes yesterday about the caves, I  
12 believe they're on Mount Kelsey?

13 A. (Witness Pelletier nodding affirmatively).

14 Q. And, I think you answered that you "didn't look into  
15 those caves because they're not on the Project site",  
16 is that correct?

17 A. (Pelletier) My understanding is we sent out these  
18 initial letters looking for information. And, again,  
19 as part of the study designs, at that time we weren't  
20 aware of it. It wasn't until 2008, after most of the  
21 construction -- after most of the surveys had been  
22 done, the field surveys had been done, that U.S. Fish &  
23 Wildlife Service came back with that letter. That  
24 letter talked about, and then you look, there was a  
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[WITNESS PANEL: Pelletier|Gravel]

1 cave -- there was an issue about a cave. The fact that  
2 no known Indiana bats are within -- are in New  
3 Hampshire, those were some of the things that, you  
4 know, were put into consideration of whether or not to  
5 do the surveys out there. But, essentially, no, nobody  
6 did go out and take a look at those caves.

7 Q. Okay. And, do you know where the cave or caves are?

8 A. (Pelletier) I don't know.

9 Q. Do you, Mr. Gravel?

10 A. (Gravel) No.

11 Q. If somebody told you where they were, do you think it  
12 would be useful to go and look in there and see what  
13 kind of bats were using it?

14 A. (Pelletier) I think it would be -- it would be  
15 something we would do. But, again, we were working --  
16 we had our Anabats set up in the Project area itself,  
17 --

18 Q. All right.

19 A. (Pelletier) -- because that's where the risk would be.

20 Q. And, to your knowledge, you know, assuming, if the  
21 caves are on Mount Kelsey, as alleged by the Fish &  
22 Wildlife Service, is it possible that animals from that  
23 cave would visit areas on Mount Kelsey or Owlhead,  
24 where there might be turbines located?

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1 A. (Gravel) I mean, there's a possibility, but they would  
2 likely go lower, foraging for insects over stream  
3 corridors, like the Phillips Brook area, and logging  
4 roads after leaving their roosts. It's more migratory  
5 bats that we would expect to be traveling along the  
6 ridgeline, at least at heights where turbines would be.

7 Q. Okay. But it is possible that the bats from the "bat  
8 cave" would be up on the ridge?

9 A. (Gravel) It's possible, but we think it would be a  
10 smaller chance.

11 Q. Okay. And, if you knew, for example, let's say, you  
12 said that you don't believe there are any Indiana bats  
13 in there, but there are other bat species that use  
14 caves, correct?

15 A. (Pelletier) That's correct.

16 Q. And, there are other bat species that might be of  
17 concern in New Hampshire that could possibly live in  
18 those caves, correct?

19 A. (Pelletier) Right. A lot of those usually will forage  
20 in the canopy, they're relatively low-flying.

21 Q. Okay.

22 A. (Pelletier) And, as Adam said, these other studies that  
23 we've seen where there's been caves in the Northeast,  
24 again, the common understanding is that these -- where  
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[WITNESS PANEL: Pelletier|Gravel]

1 they're foraging is not up on the ridgelines, where  
2 there's not as much food as there would be near  
3 wetlands, lower valley, river valley areas.

4 Q. But, still, if there were a species of concern in that  
5 cave, wouldn't it make sense to figure out where they  
6 are and how many of them there are and where they go?

7 A. (Gravel) During -- Yes. During the field studies, --

8 Q. Okay.

9 A. (Gravel) Can I explain this?

10 Q. Sure.

11 A. (Gravel) During the field studies, we did not find any,  
12 as well as -- any caves, as well as the other  
13 consultants that were on the Project. And, when asked  
14 to -- I asked for -- to try to get more information  
15 about these features from U.S. Fish & Wildlife Service,  
16 I did not have any luck.

17 Q. Okay. Now, as I understand, in general, your view is  
18 that it's difficult to draw any firm conclusions about  
19 the impacts of wind turbines on birds with  
20 pre-construction studies. Is that a fair statement?

21 A. (Pelletier) That's correct.

22 Q. Now, it is possible, though, correct?

23 A. (Pelletier) I haven't really worked out those metrics

24 very well.

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[WITNESS PANEL: Pelletier|Gravel]

1 Q. And, I'm calling -- I'd like to call your attention to  
2 the document that was prepared by the National Academy  
3 of Sciences, called "Environmental Impacts of  
4 Wind-Energy Projects". Are you familiar with this  
5 book?

6 A. (Pelletier) It's a 2007 document?

7 Q. Yes.

8 A. (Pelletier) Yes.

9 Q. And, there's a chapter in there, "Ecological Effects of  
10 Wind-Energy Development".

11 A. (Pelletier) Right.

12 MS. GEIGER: Mr. Roth, could we get an  
13 exhibit number reference please?

14 MR. ROTH: It was provided to me as part  
15 of PC 4-71. I don't believe it's among the exhibits.  
16 And, I'm just using it for purposes of cross-examination.

17 MR. IACOPI NO: Is it a response to a  
18 data request?

19 MR. ROTH: It was a response to a data  
20 response. So, I guess it's there in the exhibits.

21 MR. IACOPI NO: It should be in here,  
22 yes. It should be Petitioner 21.4. We have 1, 2, --  
23 22-1, 2, and 3 up here. Is that one of the -- one that  
24 may have contained confidential information?

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[WITNESS PANEL: Pelletier|Gravel]

1 CHAIRMAN GETZ: Okay. Let's go off the  
2 record while we identify --

GRP-DAY3.txt

3 (Off the record.)

4 CHAIRMAN GETZ: Let's get back on the  
5 record, and make sure we've properly identified the  
6 exhibit, then you can ask the question.

7 MR. ROTH: All right. The exhibit is an  
8 attachment to a data request that I made, and it's a book.  
9 It's called "Environmental Impacts of Wind-Energy  
10 Projects", and it's written by the National Academy of  
11 Sciences, and dated 2007. And, it was part -- it's one of  
12 their exhibits, I don't know which one.

13 MR. IACOPI NO: Petitioner 21.4.

14 MR. ROTH: Okay.

15 BY MR. ROTH:

16 Q. Now, I'm looking at Chapter 3, which is called  
17 "Ecological effects of Wind-Energy Development". And,  
18 I believe, Mr. Pelletier, you said that you're familiar  
19 with this, with this work?

20 A. (Pelletier) I'm familiar with these documents here.

21 Q. Okay.

22 A. (Pelletier) There are a number of others trying to pull  
23 all this data together.

24 Q. And, I look on Page 68, in the first full paragraph  
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[WITNESS PANEL: Pelletier|Gravel]

1 there, the second part of it, where it says "While  
2 estimation of avian fatalities caused by wind-power  
3 generation is possible, the data on total bird deaths  
4 caused by most anthropogenic sources, including wind  
5 turbines, are sparse and less reliable than one would  
6 wish," --

7 A. (Pelletier) I'm sorry, could you say where we are

- 8           again?
- 9   Q.   On Page 68, the latter half of the first full  
10       paragraph. Again, I was reading: "and therefore it is  
11       not possible to provide an accurate estimate of the  
12       incremental contribution of wind-powered generation to  
13       cumulative bird deaths in time and space at current  
14       levels of development." And, this was written in 2007.  
15       Do you agree with that statement, at least as of 2007?
- 16  A.   (Pelletier) Yes.
- 17  Q.   Okay. So, it is possible to come up with a methodology  
18       to estimate bird deaths at wind turbine facilities,  
19       though it's difficult?
- 20  A.   (Pelletier) But your confidence in that data would be  
21       very limited.
- 22  Q.   Okay. But --
- 23  A.   (Gravel) And, that's not referring to pre-construction  
24       data, that's referring to nationwide summaries on bird  
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[WITNESS PANEL: Pelletier|Gravel]

- 1       mortality at developed wind projects.
- 2  A.   (Pelletier) This topic is a big one. Again, we meet  
3       almost seasonally with national groups that are  
4       academics and groups that are members of the industry  
5       that are working with this, and the Holy Grail has been  
6       trying to come up with some sort of a process that can  
7       link all that pre-construction data with real risk.
- 8  Q.   Okay. So, the science is developing, correct?
- 9  A.   (Pelletier) That's correct.
- 10  Q.   And, when you're dealing with an uncertain area, in a  
11       developing kind of science, you try to be as  
12       conservative as possible, correct?

- 13 A. (Pelletier) You would hope.
- 14 Q. And, especially in a situation where you're dealing
- 15 with possibly threatened and engaged species of
- 16 wildlife, correct?
- 17 A. (Pelletier) Correct.
- 18 Q. And, I would assume that both of you would probably
- 19 consider yourselves environmentalists and believe in
- 20 wildlife conservation?
- 21 A. (Pelletier) That's why we're here.
- 22 A. (Gravel) That's correct.
- 23 Q. And, so, you want to be as careful about this as
- 24 possible and make sure that you're not doing something,
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[WITNESS PANEL: Pelletier|Gravel]

- 1 you know, that's willy-nilly, because you're in a very
- 2 important place, aren't you?
- 3 A. (Pelletier) We want to make sure that our -- the data
- 4 that we collect is sound and as best we can, it's going
- 5 to be accepted by not only our clients, but by the
- 6 agencies and our peers that are also doing this type of
- 7 work.
- 8 Q. Okay. And, would you agree that it is true that --
- 9 that it is absolutely true that a wind turbine farm,
- 10 even a single wind turbine, just one, is likely to have
- 11 birds flying around it day and night?
- 12 A. (Pelletier) Yes.
- 13 A. (Gravel) Yes.
- 14 Q. Perhaps all times of the year, correct?
- 15 A. (Gravel) Yes.
- 16 A. (Pelletier) We expect that some mortality will happen.
- 17 Q. And, some of them will be killed correct?

18 A. (Pelletier) That's correct.

19 Q. And, some of the birds that might be killed might be  
20 really interesting and important birds, correct?

21 A. (Pelletier) Could be.

22 Q. Now, I assume you're both familiar with general  
23 wildlife populations in northern Coos at some level,  
24 correct?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Pelletier) Essentially.

2 Q. And birds and bats?

3 A. (Pelletier) That's correct.

4 Q. And, do you know, for example, whether there are Bald  
5 Eagles that live in Coos County?

6 A. (Gravel) Yes.

7 Q. Go ahead.

8 A. (Gravel) Yes. I'm aware of one or two along the  
9 Pontook Reservoir and Androscoggin River.

10 Q. Okay. So, that's fairly close to the project area,  
11 isn't it?

12 A. (Gravel) Yes.

13 Q. And, are there Golden Eagles that live here?

14 A. (Gravel) Not that we're aware of.

15 Q. Okay. Is the Bald Eagle still a -- it's off the  
16 Endangered List, correct?

17 A. (Pelletier) That's correct.

18 Q. But is it a Threatened -- is it Threatened still?

19 A. (Pelletier) I think, by the State.

20 Q. Okay. So, it's a rare and precious bird for a lot of  
21 regions in the United States, isn't it?

22 A. (Witness Pelletier nodding affirmatively).

- 23 Q. And, they have live near the Project site, don't they?  
24 A. (Witness Pelletier nodding affirmatively).

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[WITNESS PANEL: Pelletier|Gravel]

- 1 Q. And, is it possible that at some point we could go up  
2 on Mount Kelsey or Fishbrook and find a dead Bald  
3 Eagle?  
4 A. (Gravel) It is possible. May I explain what is known  
5 about mortality, though? In that, out of all these  
6 wind projects that you referred to already, not one  
7 Bald Eagle has been killed by a wind turbine.  
8 Q. Not one that's been found, correct?  
9 A. (Gravel) Or documented.  
10 Q. Okay. We just can't be sure how many are going to be  
11 killed, and I'm not talking about Bald Eagles in  
12 particular. But, in terms of avian mortality, there is  
13 lot of uncertainty about, both based on the  
14 pre-construction and a post-construction study, about  
15 what's going to happen or what has happened?  
16 A. (Pelletier) Again, the pre-construction studies, I  
17 think, can be characterized early on as really vigorous  
18 attempts to try to understand risk, and now I believe  
19 that it probably would be better to characterize them  
20 as something that you're looking for, is there anything  
21 out of the ordinary? Are there really red flags here  
22 that we need to focus a particular study or, you know,  
23 if the permit gets accepted, is there particular  
24 conditions that you want to, you know, address specific

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[WITNESS PANEL: Pelletier|Gravel]

- 1 species concerns. It's the post-construction work that  
2 really is what's focusing on identifying risks, and  
3 that's what we're really learning a lot from now.
- 4 Q. Okay. And, we'll get to that in a couple of minutes, I  
5 think. Do wind turbines kill breeding birds resident  
6 -- breeding birds that live near them?
- 7 A. (Gravel) Yes, but the majority has been migrating  
8 birds.
- 9 Q. Okay. And, I noticed in some of your testimony, or  
10 maybe it was in the reports, there seemed to be a  
11 distinction made between "resident birds" and "breeding  
12 birds". Are they different?
- 13 A. (Gravel) There was no distinction made in our reports  
14 on resident birds and breeding birds. There was  
15 distinctions made in our raptor survey report that  
16 distinguished between resident and migrating birds.
- 17 Q. So, the raptors are -- So, the distinction in there was  
18 made between resident raptors?
- 19 A. (Gravel) Yes.
- 20 Q. Okay. Is a resident raptor included in the general  
21 rubric of breeding birds?
- 22 A. (Gravel) No, because we were there during the migration  
23 season, so you couldn't definitely say it was a  
24 breeding raptor. Or, you could say, if it displayed  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 flight directions or behaviors nontypical of a  
2 migratory bird, we marked it as "resident".
- 3 Q. Okay.
- 4 A. (Pelletier) Well, obviously, we, as well, during any  
5 one of our surveys, and, again, there's a number of

- 6 different surveys. If we see breeding activity,  
7 particularly by a raptor, it's something that's noted  
8 and documented.
- 9 Q. Okay. Now, when the wind turbines are being  
10 constructed, will there be indirect impacts on breeding  
11 birds?
- 12 A. (Pelletier) There would be a loss of the direct habitat  
13 where that actual -- the turbines and the roads are  
14 being placed. There can be indirect edge effects, but  
15 it's all depending on the particular species we're  
16 talking about and how well they adapt to those changes.
- 17 Q. Okay. And, I understand that the mitigation package is  
18 supposed to make up for some of this, right?
- 19 A. (Pelletier) That's correct.
- 20 Q. All right. Now, I remember I asked for, in one of the  
21 data requests, I asked "how many Bicknell's thrushes  
22 will be killed by building wind turbines on Dixville?"  
23 Do you remember that question?
- 24 A. (Gravel) Yes, I do.

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[WITNESS PANEL: Pelletier|Gravel]

- 1 Q. And, do you remember what the answer was?
- 2 A. (Gravel) "Can't predict the number of Bicknell's that  
3 would be killed, or any other bird."
- 4 Q. Didn't you say that, based on the acreage that was  
5 being impacted, that there would be five pairs of  
6 breeding -- five breeding females that would be  
7 dislocated by the construction?
- 8 A. (Gravel) I believe that you're referencing  
9 Mr. Lloyd-Evans' testimony. And, on Dixville, he said  
10 that "23 acres of impact would be equivalent to four

11 breeding Bicknell's home ranges. "

12 Q. No, I think it was you who answered this question for  
13 me.

14 MR. ROTH: Bear with me please.

15 BY MR. ROTH:

16 Q. And, I turn your attention to Public Counsel Question  
17 Number 3-82. And, perhaps you didn't answer this  
18 question, maybe somebody else answered it. And, maybe  
19 I oversold your answer, but I think my overselling was  
20 not unfair. And, once we've found it for the  
21 Committee, I'll ask the question.

22 CHAIRMAN GETZ: Well from where I'm  
23 sitting, it looks like a short question and answer. Why  
24 don't you just read it into the record.

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[WITNESS PANEL: Pelletier|Gravel]

1 MR. ROTH: Okay.

2 BY MR. ROTH:

3 Q. Question Public Counsel 3-82 said: "Please quantify  
4 the likely effect on populations of Bicknell's thrush  
5 from the construction of the Project on Dixville Peak."  
6 Do you remember that question now?

7 A. (Gravel) I don't remember the question.

8 Q. And, the answer, and maybe this wasn't you, and perhaps  
9 counsel can tell me who did answer it then, if it  
10 wasn't you. And, the answer was "Construction of roads  
11 and turbine pads is projected to eliminate 23 acres  
12 (9.3 hectares) or high elevation Spruce-fir habitat on  
13 Dixville Peak. This translates to the equivalent of  
14 four female Bicknell's thrush home ranges, which  
15 average 5.75 acres (2.33 hectares). See also response

16 to PUC 3-72." So, does that sound -- does that refresh  
17 your recollection about that question and answer?  
18 A. (Gravel) I don't remember answering the question, but I  
19 don't disagree with that, based on the home -- the  
20 Bicknell's home ranges. But that is to explain -- that  
21 is to assume that all 23 acres of habitat on Dixville  
22 Peak is suitable Bicknell's habitat. And, which is --  
23 suitable habitat is dense, regenerating balsam fir.  
24 And, we know that Dixville does not -- all that 23  
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[WITNESS PANEL: Pelletier|Gravel]

1 acres is not suitable Bicknell's habitat.  
2 Q. Okay. But some of it is, correct?  
3 A. (Gravel) Some of it is.  
4 Q. Okay. And, similarly, on Kelsey, there's probably more  
5 or additional Bicknell's thrush habitat and additional  
6 breeding female or female Bicknell's thrush home ranges  
7 up there?  
8 A. (Gravel) Yes. We estimate that one to two turbines on  
9 each ridge line is in proximity to suitable Bicknell's  
10 habitat.  
11 Q. Okay. And, similarly, on Owlhead?  
12 A. (Gravel) Owlhead, I don't believe there is any impacts  
13 to Bicknell's habitat.  
14 Q. Okay. And, none on Fishbrook either?  
15 A. (Gravel) No, definitely not Fishbrook.  
16 Q. Okay. So, is it -- So, I don't think you disagree with  
17 me that the construction of the Project will have  
18 impacts on Bicknell's thrush female home ranges on at  
19 least Dixville and Kelsey, correct?  
20 A. (Gravel) Yes, but not the equivalent of this response.

21 Q. Okay.

22 A. (Gravel) Theoretically, if that was all suitable  
23 habitat, that statement would be true.

24 Q. Okay. So, you're saying you can't make the conclusion  
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[WITNESS PANEL: Pelletier|Gravel]

1 strictly numerically here, as was done by this?

2 A. (Gravel) No.

3 Q. Okay. That's fine. When you disrupt the breeding  
4 habitat, the habitat of this bird and other birds, I  
5 assume there are other breeding birds that live in  
6 these areas, with the construction of these projects,  
7 are they gone forever?

8 A. (Pelletier) Not at all. That's one of these things  
9 about this high elevation habitats is, particularly in  
10 the areas that Bicknell's prefer, which is mostly fir,  
11 it's the type of habitat that will blow down and that  
12 has edges. And, Bicknell's, in particular, like that  
13 higher elevation habitat, they prefer those types of  
14 edges. There is nothing to think that they won't treat  
15 this like they would any other natural opening or like  
16 we've seen in -- it's been documented at the ski  
17 studies, and we've talked about in the past where you  
18 see nesting Bicknell's along the edges of those and  
19 reproducing.

20 Q. Okay. So, at some point, it's your opinion that these  
21 breeding birds that are disrupted by the noise and  
22 commotion and digging and destruction of the project's  
23 construction are going to return?

24 A. (Pelletier) That's correct.

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[WITNESS PANEL: Pelletier|Gravel]

- 1 Q. At least some of them?
- 2 A. (Pelletier) Yes.
- 3 Q. And, you know, if they got run over or something, those  
4 ones don't come back, but other ones will come back and  
5 the population could very well regenerate?
- 6 A. (Pelletier) Yes.
- 7 Q. And, is that going to happen during the construction  
8 season or is that going to happen sometime after the  
9 project is -- after things get quiet again?
- 10 A. (Pelletier) I think there would be more influences  
11 during the construction season.
- 12 Q. But, in terms of them returning, are they going to  
13 return while there's still cranes and people running  
14 around or are they going to come back later?
- 15 A. (Pelletier) It depends on where certain equipment is at  
16 what certain time. I mean, there's a very brief period  
17 of time that they're actually looking to locate a place  
18 where they're going to establish a nest. And, you  
19 know, then there's affinity to that nest for a brief  
20 period of time. It depends on the amount of  
21 disturbance, the adjacency to it. But will there be  
22 Bicknell's breeding in these Project areas during  
23 construction, I would think so, yes.
- 24 Q. Okay.

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[WITNESS PANEL: Pelletier|Gravel]

- 1 A. (Gravel) And, just to explain, too, part of the  
2 construction strategy is to avoid those areas during  
3 the breeding season.
- 4 Q. Okay.

5 A. (Gravel) Construction in those areas.  
6 Q. If you had a baseline -- do you have a baseline for  
7 what the population of the various species that are, I  
8 guess, you know, New Hampshire Audubon characterizes  
9 several species as at "high risk" and others at  
10 "moderate risk" because of the project. Do you  
11 remember the characterization in the breeding bird  
12 study?

13 A. (Witness Gravel nodding affirmatively).

14 Q. Do you have a baseline for how many of those species,  
15 what kind of populations there are up there of the  
16 "high risk" and "moderate risk" birds?

17 A. (Gravel) Not, I mean, not the number, population size,  
18 but we have documented relative abundance measurements  
19 on each point that they surveyed during their survey.

20 Q. Okay. So, you have some kind of a baseline. And,  
21 would you expect that, if you were to go back, let's  
22 say, the day construction finished and did a similar  
23 survey, would you expect to find that population had  
24 declined at that point?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Pelletier) Assuming that those are seasonally  
2 comparable.

3 Q. Okay.

4 A. (Pelletier) You know, which is a -- that's a big, big  
5 "if". But, if they were, I think it's difficult to  
6 say. I expect you would still be picking up  
7 Bicknell's.

8 A. (Gravel) And, in converse, the Project and construction  
9 of the Project may increase Bicknell's' abundance,

- 10 because -- due to the creation of habitat; whereas a  
11 lot of the habitat is not present now.
- 12 Q. Okay. But, my question was, if, you know, the day the  
13 last crane drives away, and the ribbon cutting and all  
14 the Champagne corks are swept up, do you have -- and  
15 you did another baseline survey at that point, would  
16 you expect to see that there was some decrease in the  
17 population of these various species of there because of  
18 the disruption and the displacement?
- 19 A. (Pelletier) I think it's difficult to say whether it  
20 would be a decrease. I wouldn't be surprised if there  
21 was a decrease or an increase.
- 22 Q. Okay. Would you be surprised if or would you expect to  
23 go, say, two years after construction and find that  
24 your baseline that you took before construction had
- {SEC 2008-04} [Day 3 - REDACTED] {03-11-09}

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[WITNESS PANEL: Pelletier|Gravel]

- 1 been reattained?
- 2 A. (Pelletier) I wouldn't be surprised.
- 3 Q. So, that would be -- would that be logical to expect  
4 that, you know, you got a baseline that's  
5 pre-construction, maybe you get some decline because of  
6 the noise and the commotion by the end of construction,  
7 and then some point out in the future you would see  
8 populations having recovered somewhat, correct?
- 9 A. (Pelletier) Recovered, and, as Adam just suggested, the  
10 new increase in edge, which is something that draws  
11 Bicknell's thrush to nesting sites, may be an  
12 enhancement of that habitat?
- 13 Q. So, you're saying you could have an even greater  
14 abundance?

- 15 A. (Pelletier) It's difficult to say. Will there be  
16 Bicknell's thrush post-construction up there? Yes.  
17 Q. Yes. But there are other species as well.  
18 A. (Pelletier) That's correct.  
19 Q. I don't want to spend too much time focused on the  
20 Bicknell's thrush, then they're going to get a complex  
21 about it. You know, there are other species that are  
22 going to get a complex because we're not paying enough  
23 attention to them.  
24 A. (Pelletier) Right.

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[WITNESS PANEL: Pelletier|Gravel]

- 1 Q. In terms of the recovery slope, if you could sort of  
2 look at it as sort of, you know, a U-shaped curve a  
3 little bit, where would you expect sort of a recovery  
4 point to be on the other side of construction or where  
5 you would see populations starting to become more  
6 abundant because of this phenomena you describe of the  
7 new edges and the new habitat and open space?  
8 A. (Pelletier) I'm not sure that you could actually  
9 measure a significant change. You know, it would  
10 require some very detailed and isolated habitat studies  
11 to determine whether or not there was going to be those  
12 types of surveys -- those type of changes. And, by  
13 that, I mean very specific areas, and some very  
14 long-term, intensive monitoring. And, otherwise than  
15 that, I don't believe that the species that are up  
16 there, and "are they regular?", "they're common", "are  
17 they abundant?" or "are they uncommon?", I think it's  
18 going to continue to be the same. So, I don't know  
19 that there's an answer for that question right now. I

20 don't know that it's -- that there's a measurable  
21 change that you would see.

22 Q. So, you think that, with all the noise and commotion,  
23 and the disruption and the digging and blasting and  
24 bulldozing and everything that they're going to do up  
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[WITNESS PANEL: Pelletier|Gravel]

1 there, that birds who live in the places where this is  
2 all happening aren't going to flee?

3 A. (Pelletier) No, there will be a direct loss of that  
4 habitat. And, again, depending on the species  
5 sensitivity, other species that are along the edges may  
6 leave this area. But, again, the type of actions that  
7 you're seeing up there with the road building, it's not  
8 all that much different than the type of timber  
9 harvesting and the road building associated with that.  
10 And, again, you're going to see so those same suite of  
11 species returning, some maybe not as close to the edge,  
12 but --

13 Q. I don't disagree with you about that. What I'm trying  
14 to understand is, when do we expect them to come back?

15 A. (Pelletier) I would --

16 Q. I think we're in agreement that they're going to come  
17 back. And, the question is, "how many years?" And,  
18 I'm not saying that it's -- you know, I'm not telling  
19 you that I believe or I have an expert who's going to  
20 testify "it's going to take 30 years". I'm just  
21 telling you, I'm just trying to understand what you  
22 believe is sort of a point where we can look at  
23 recovery. And, if you tell me it's "two years", "three  
24 years", "five years", I just want to get some idea from

[WITNESS PANEL: Pelletier|Gravel]

1 you guys, who are experts at this sort of thing, when  
2 we can expect to see that happen?

3 A. (Gravel) There's been one study that we're aware of in  
4 New England, and that was at the Searsburg facility.  
5 They found that the recolonization was -- took about  
6 two, two or three years.

7 Q. Two or three years, after the completion of  
8 construction?

9 A. (Gravel) Yes.

10 Q. Okay. Thank you. That's very helpful. Now, turning  
11 to the raptor survey, is it true that nobody, neither  
12 New Hampshire Audubon nor yourselves, surveyed the  
13 Project site for -- or any of the turbine locations for  
14 raptor-type areas, that they might use for nesting,  
15 roosting, feeding, that there was no comprehensive  
16 survey or search for those kinds of features where  
17 raptors might frequent, is that true?

18 A. (Gravel) That's true.

19 Q. So, there's no report in this record of any -- of any  
20 kind that says "we searched for raptor sites and we  
21 didn't find any"?

22 A. (Gravel) That's true. I think that there's -- I mean,  
23 the breeding bird surveys and the raptor surveys and  
24 other surveys would have noted those observations, but

[WITNESS PANEL: Pelletier|Gravel]

1 no formal study was conducted to identify breeding  
2 habitat.

- 3 Q. So, the breeding bird survey didn't really search for  
4 raptors either, did they?
- 5 A. (Gravel) It wasn't targeting raptors.
- 6 Q. Okay. Now, I noted from their charts, their detection  
7 charts, they didn't note the presence of a single  
8 raptor, is that correct?
- 9 A. (Gravel) Based on those charts, that's correct. But  
10 they did notice a -- I think it was a merlin during  
11 their --
- 12 Q. And a merlin is a raptor?
- 13 A. (Gravel) Yes.
- 14 Q. Okay. But they didn't note anything else, other than  
15 the one observation of a merlin?
- 16 A. (Gravel) That's correct.
- 17 Q. Okay. Do you know whether New Hampshire Audubon  
18 actually had in their scope of services, their scope of  
19 work to look for raptors?
- 20 A. (Gravel) No, but any scientist will write down any  
21 observation they see in the field during -- so, and  
22 they were there during the breeding season.
- 23 Q. So, "no", the answer is you "don't know that" or "no",  
24 "the scope of services didn't include that"?

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[WITNESS PANEL: Pelletier|Gravel]

- 1 A. (Gravel) No, the scope of services didn't include that.
- 2 Q. Okay. And, similarly, the scope of services did not  
3 instruct New Hampshire Audubon to look for raptor  
4 areas, I don't know what you call them?
- 5 A. (Pelletier) But, I think, again, the answer is, while  
6 you're in the field, those are observations that you  
7 would definitely be putting down. Any half competent

8 biologist that's doing those surveys out there is going  
9 to be noting the presence of a nest or observations of  
10 raptors.

11 Q. Okay. But, none are noted in the report, and we were  
12 told they were -- we just learned that they were not  
13 asked to look for them?

14 A. (Pelletier) No formal surveys, correct.

15 Q. Okay. And, when you did the raptor survey, you know,  
16 the migrating raptor survey in the fall for the 11  
17 days, you noticed some resident species, correct?

18 A. (Gravel) That's correct.

19 Q. And, how many? How many resident birds did you find?

20 A. (Gravel) I don't know that off the top of my head. I  
21 can refer to the report?

22 Q. If you wish, sure.

23 A. (Gravel) So, I don't have the exact count, but  
24 22 percent were believed to be residents, and they were  
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[WITNESS PANEL: Pelletier|Gravel]

1 all red-tailed hawks.

2 Q. Okay. I was going to ask you "what were the other  
3 species?" What were the species? Red-tailed hawks?

4 A. (Gravel) Red-tailed hawks were the resident  
5 observations.

6 Q. Okay. And, was there a Cooper's hawk observed?

7 A. (Gravel) Yes, there was.

8 Q. And, did you believe that was a resident bird or was  
9 that a migrating bird?

10 A. (Gravel) It was a migrating bird.

11 Q. That was a migrating bird. And, is a Cooper's hawk  
12 threatened or endangered or anything like that?

- 13 A. (Gravel) I believe it's threatened in New Hampshire.
- 14 Q. Okay. So, you saw one of those on the 11 days that you
- 15 were up there?
- 16 A. (Gravel) That's correct.
- 17 Q. Okay. And, when you were doing the raptor survey,
- 18 didn't you -- isn't it true that you observed that the
- 19 majority of those raptors that you observed were flying
- 20 below the turbine height?
- 21 A. (Gravel) Yes, that's correct.
- 22 Q. Okay. And, isn't it true that the difficulties with
- 23 pre-construction surveys, as you know, are also true
- 24 for pre-construction raptor surveys, correct?

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[WITNESS PANEL: Pelletier|Gravel]

- 1 A. (Gravel) Yes, that's correct. However, just to point
- 2 out and explain, the majority of diurnal raptor surveys
- 3 -- the majority of those surveys have found their
- 4 observations below turbine height.
- 5 Q. Okay. So, it's common that the majority of raptors
- 6 that are observed during a raptor survey are flying
- 7 within the turbine height, correct?
- 8 A. (Gravel) I'd like to correct that, actually. It's not
- 9 -- it's upwards to 45 percent all observations are
- 10 below turbine height.
- 11 Q. Generally. But, in this case, you saw 55 percent,
- 12 didn't you?
- 13 A. (Gravel) That's correct.
- 14 Q. Okay. What kind of projects, and you mentioned earlier
- 15 the Altamont and I guess it's the Tehachapi, and he's
- 16 going to go crazy trying to spell that, projects, and,
- 17 in particular, we'll call it Altamont, there were large

- 18 amounts of raptor kills there, correct?
- 19 A. (Pelletier) That's correct.
- 20 A. (Gravel) That's correct.
- 21 Q. And, that created a great deal of study about why is a
- 22 windfarm killing raptors, correct?
- 23 A. (Pelletier) Yes.
- 24 Q. And, the people who have studied this have come up with  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 some ideas about what it is about a windfarm that kills
- 2 raptors, correct?
- 3 A. (Pelletier) A lot was learned from -- that was,
- 4 Tehachapi and Altamont, they were developed in the
- 5 '70s, and a great deal was learned with those projects.
- 6 Q. Okay. And, wasn't one of the things that was learned
- 7 is that it's a bad idea to build a windfarm in the
- 8 middle of an abundance -- an abundant raptor
- 9 population?
- 10 A. (Pelletier) That was one of the things learned.
- 11 Q. And, that it's a bad idea to build a windfarm in the
- 12 middle of raptor habitat, where they live?
- 13 A. (Pelletier) It was a -- One of the -- a little history
- 14 on that project, is that these were grasslands that had
- 15 been formerly grazed, and they started building
- 16 thousands of lattice-type turbines that had very
- 17 fast-spinning blades. And, they were densely
- 18 concentrated. Nothing like you're seeing the
- 19 particular turbines that are being placed along ridge
- 20 tops now. And, that what you, in effect, had was a
- 21 very dense concentration of very fast-spinning blades,
- 22 in a habitat that formerly had been grazed. What

23 happened was they closed it to grazing. A lot of the  
24 rodents that were in those fields, basically, the  
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[WITNESS PANEL: Pelletier|Gravel]

1 populations just went real high, and you created this  
2 perfect place where raptors were migrating through to  
3 actually have places on these lattice structures,  
4 versus the columns that we have now, to perch, to hunt,  
5 and it was a perfect foraging opportunity for these  
6 things. And, that combination of location, habitat,  
7 prey abundance, and perching opportunities was kind of  
8 -- really was a big awakening for a lot of biologists  
9 and the wind industry.

10 Q. Okay. So, it's important to know, when you're sitting a  
11 windfarm, whether there's an abundance of prey, right,  
12 as you said, and habitat, and perching opportunities.

13 A. (Witness Pelletier nodding affirmatively).

14 Q. So, if you have a situation where you have resident  
15 raptors, and they're pretty happy there eating, you  
16 know, catching prey, and nesting, roosting, whatever  
17 they do, you'd want to know that before you built a  
18 windfarm there, right?

19 A. (Pelletier) That's correct.

20 Q. Okay. Now, I don't know if you were here yesterday  
21 when there was testimony about the power lines that are  
22 going to be constructed for this Project. Did you hear  
23 that testimony?

24 A. (Pelletier) We missed that.

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[WITNESS PANEL: Pelletier|Gravel]

1 Q. There was testimony yesterday that, from the southern

- 2 end of I believe it's the Fishbrook string, there's  
3 going to be above-ground power lines to travel  
4 approximately a mile and a half overland to the  
5 substation. Does that sound -- Are you familiar with  
6 that?
- 7 A. (Gravel) That sounds about right.
- 8 Q. Okay. Is there anything about those above-ground power  
9 lines, in proximity to the turbine string on Fishbrook  
10 that gives you any concern about whether it's a  
11 perching place?
- 12 A. (Pelletier) Not any different than the miles and miles  
13 and miles of right-of-ways, utility right-of-ways that  
14 we see all across the landscape everywhere else.
- 15 Q. But are those miles and miles of utility lines in  
16 proximity to operating wind turbines?
- 17 A. (Gravel) Not sure about operating wind turbines, but  
18 definitely communication towers and cellphone towers  
19 hours, yes.
- 20 Q. Okay.
- 21 A. (Gravel) Other structures that can cause mortality.
- 22 Q. Do raptors perch on power lines and power poles?
- 23 A. (Pelletier) It's a problem in some areas, yes.
- 24 Q. So, when we describe wind turbines on Fishbrook, and  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 above-ground power lines, and presumably poles, and  
2 maybe other structures, guide lines -- guy lines, I  
3 don't know, would those be opportunities for raptors to  
4 perch near the Fishbrook turbines?
- 5 A. (Pelletier) It's a theoretical possibility, yes.
- 6 Q. And, is that -- to you, does that present a possibility

- 7 for mortality?
- 8 A. (Pelletier) Again, I think the risk is limited, but it  
9 is -- but anything is a possibility.
- 10 Q. Okay. Do you know, and this is a question that really  
11 I have no -- I'm just asking this one, there was some  
12 statement in the record about whether the Project was  
13 going to use insulated conductors or uninsulated  
14 conductors and/or a mixture of them. And, maybe you  
15 guys don't know the answer to this. But, if you have  
16 an uninsulated conductor that's strung on high poles,  
17 and, if a raptor lands on it, doesn't the raptor get  
18 electrocuted?
- 19 A. (Pelletier) I guess, theoretically, yes. But, again,  
20 we see projects that have nothing to do with wind, and  
21 just transmitting power everywhere, and it's not like  
22 we're see a lot of dead raptors under these poles.
- 23 A. (Gravel) I'd like to add to that. I don't believe that  
24 that's possible. I think that the -- I mean, I think  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 that there's a possibility, but I think the likelihood  
2 is low. You see birds perching on power lines all the  
3 time, and I think there's -- they have to be grounded,  
4 as far as I know. I mean, I'm not an electrical  
5 expert, but --
- 6 Q. I'm not either. I'm just asking the question. Maybe  
7 we got an engineer here who can answer it for us, but  
8 -- or one of our Public Utilities' experts. But,  
9 assuming we have an uninsulated line, which I believe  
10 exists, and perhaps are being proposed for this  
11 project, if a bird landed on it, might it become

12 electrocuted?

13 A. (Gravel) I don't know.

14 A. (Pelletier) I don't know.

15 Q. Yes, and I don't. That's just a question that I had.

16 Now, I understand that a lot of -- now, you are

17 concerned and it's your belief that pre-construction

18 studies all by themselves are not a really good

19 predictor of avian mortality, correct?

20 A. (Gravel) Yes, except to put it into perspective of

21 other pre-construction surveys. So, I mean, we don't

22 think it's a good predictor of risk, but we think that

23 it's a valuable tool to identify where -- what part of

24 the spectrum it is located in.

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[WITNESS PANEL: Pelletier|Gravel]

1 Q. Okay. And, the way you validate whether your -- the

2 way you validate your assumptions and your conclusions

3 of your pre-construction estimates and your

4 pre-construction belief that it's not going to have a

5 significant impact, is by conducting a

6 post-construction mortality survey, correct?

7 A. (Witness Pelletier nodding affirmatively).

8 Q. And, do you know on any of the projects --

9 A. (Pelletier) Yes.

10 Q. Thank you. Are there any projects that you're familiar

11 with where a post-construction study was not done?

12 A. (Pelletier) Outside of the Northeast, I'm not aware of

13 any projects that have not had a post-construction

14 survey.

15 Q. And, isn't it true that Stantec is considered, at least

16 in the Northeast, one of the leading experts on

- 17 conducting post-construction mortality surveys?  
18 A. (Pelletier) We're involved with several, and keep  
19 working with, you know, updating the process all the  
20 time.  
21 Q. That's a very modest answer. Have you been retained by  
22 the Project to conduct a post-construction mortality  
23 survey for this Project?  
24 A. (Gravel) No.

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[WITNESS PANEL: Pelletier|Gravel]

- 1 Q. Would you recommend that a post-construction mortality  
2 survey for this project be done?  
3 A. (Pelletier) Yes.  
4 A. (Gravel) Yes.  
5 Q. And, didn't you, in fact, testify, in your prefiled  
6 testimony, that the Project has agreed to do a  
7 post-construction mortality survey?  
8 A. (Gravel) In our supplemental testimony, yes.  
9 Q. Okay. We haven't seen that agreement anywhere. You  
10 mention in your supplemental that, as mentioned  
11 earlier, the Project has agreed to do a  
12 post-construction mortality survey. And, I searched  
13 for that, I couldn't find it.  
14 A. (Pelletier) I think that plan is something, again,  
15 considering their construction, probably, you know,  
16 it's going to be a couple of years before you've  
17 actually got a wind turbine to actually do a  
18 post-construction, that it's most appropriate to  
19 develop that protocol, you know, as this process moves  
20 along. Again, just the statistical tests that are used  
21 for scavenger surveys and carcass removal surveys are

22 something that are constantly being debated. And, I  
23 think that, to put a full post-construction plan on the  
24 table right now would be inappropriate, because we'd be  
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1 changing it.

2 Q. I agree. And, I'm not suggesting that you should. But  
3 do you think it would be appropriate for the Committee  
4 to make, as a condition to any certificate that's  
5 issued, the conduct by the Applicant of some sort of  
6 post-construction mortality survey for avian species on  
7 the site?

8 A. (Pelletier) Yes.

9 A. (Gravel) Yes.

10 Q. Okay. And, can you give some idea about how long such  
11 a study should be conducted to have meaningful results?

12 A. (Pelletier) We typically see a two-year study  
13 post-construction, to look to see if there's any  
14 particular trends.

15 Q. Okay. And, when would you expect such a study to be  
16 commenced in the post-construction period?

17 A. (Pelletier) Following completion of the Project.

18 Q. You don't think that, given the discussion we had  
19 earlier about how the construction, and, in fact, the  
20 Searsburg study, I believe it was the Searsburg study  
21 that Mr. Gravel mentioned, that you should perhaps even  
22 wait a couple of years after construction is completed  
23 to do the study?

24 A. (Pelletier) Some post-construction studies will go two  
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- 1 years, and look for a third year that could be  
2 immediately right after that, or perhaps five years,  
3 you know, that third year would be after five years.
- 4 Q. So, it could be as much as five years of  
5 post-construction mortality studies?
- 6 A. (Pelletier) No. What I'm saying is, you do your first  
7 one, two years, and even some studies that we've been  
8 involved with, they do the first year, see if there's  
9 any trends, and adapt for a second year. You know, I  
10 mean, so there's an adaptation here to the, you know,  
11 again, what we're learning about across the industry  
12 and what we're learning at different -- at individual  
13 sites.
- 14 Q. Okay. So, and just so I'm -- and maybe it's just my  
15 brain isn't working so good after three days of this,  
16 you would recommend a condition that the Project be  
17 required to do post-construction mortality surveys?
- 18 A. (Pelletier) That's correct.
- 19 Q. And, are you familiar with the devices by which  
20 projects do them, in terms of, for example, in the  
21 Lempster Project, there was a Technical Advisory  
22 Committee established by order of the Committee. Are  
23 you familiar with that?
- 24 A. (Gravel) Yes.

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- 1 Q. Do you consider that to be a useful way to do it?
- 2 A. (Gravel) We don't discount it as a useful way. But we  
3 would, I mean, our recommendation for kind of an  
4 adapting process is to see how well the Technical

5           Advisory Committee works. Technical advisory  
6           committees are usually formed for the first operational  
7           project in the state. And, following that, typically,  
8           projects aren't required to use a technical advisory  
9           committee, but coordinate with the state agencies.  
10       A. (Pelletier) So, you have a template now in place with  
11           that Advisory Committee.

12                       MR. ROTH: I have no further questions  
13           for these witnesses. Thank you both very much.

14                       WITNESS GRAVEL: Thank you.

15                       WITNESS PELLETIER: Thanks.

16                       CHAIRMAN GETZ: Okay. Well, let me do a  
17           couple things now. One is a procedural formality that I  
18           neglected at the beginning of the hearing today. I'll  
19           just note for the record that all of the members of the  
20           seven members of the Subcommittee are present, so,  
21           obviously, there's a quorum, and has been present since  
22           the beginning of the hearing.

23                       And, let's just get appearances on the  
24           record.

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1                       MR. PATCH: Doug Patch and Susan Geiger,  
2           for the Applicant.

3                       MS. LINOWES: Lisa Linowes, Industrial  
4           Wind Action, an Intervenor.

5                       CHAIRMAN GETZ: Thank you.

6                       MR. MULHOLLAND: Evan Mulholland, for  
7           Department of Fish & Game.

8                       DR. PUBLICOVER: Dave Publicover and Ken  
9           Kimball, for the Appalachian Mountain Club.

10 MR. ROTH: Peter Roth, Counsel for the  
11 Public.

12 CHAIRMAN GETZ: Okay. Thank you. I  
13 guess, at this point, let me just go back to -- we still  
14 have to deal with the LaFrance/Lobdell panel at some  
15 point. But, Ms. Linowes, yesterday you gave an estimation  
16 of what your cross for that panel would be, was that like  
17 -- were you thinking an hour or --

18 MS. LINOWES: I was thinking about an  
19 hour, that's correct.

20 CHAIRMAN GETZ: Okay. All right. At  
21 this juncture, rather than start with that panel, let's  
22 see what questions there are from the Subcommittee for  
23 this panel on the issues that have been addressed so far,  
24 and then, when we're done with that, I think we would take

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1 the lunch recess, and then, even if, you know, if it's  
2 earlier than expected, and then after lunch come back to  
3 dealing with the High Elevation Mitigation Settlement  
4 Agreement. And, then, we'll just have to move the  
5 Lobdell/LaFrance panel later in the day. I want to try  
6 and get as much progress on this panel.

7 So, having said that, do we have any  
8 questions from the Subcommittee? Mr. Scott.

9 DIR. SCOTT: Good morning.

10 WITNESS GRAVEL: Good morning.

11 BY DIR. SCOTT:

12 Q. I'm not sure which of the panel is the best to answer  
13 this, so I'll let you two decide. Back on the issue of  
14 avian and bat studies, the three-year issue, the time

15 frame, how long it should take, be done over. Are you  
16 aware of any projects that use -- that did three years  
17 worth of studies, is that --

18 A. (Pelletier) Nowhere.

19 Q. Is there an average time that you're aware of? I know  
20 each project is probably different, I imagine, but --

21 A. (Pelletier) Again, it's something that usually we see a  
22 full season in most states, a spring and a fall survey.

23 A. (Gravel) It's a full year, actually. A full year of  
24 studies; one spring, one fall.

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1 A. (Pelletier) And, with the bats, we're looking at also  
2 usually a summertime period for monitoring bats as  
3 well. So, a full year.

4 Q. All right. And, did I hear you correctly that you --  
5 you said "there's a poor correlation between  
6 pre-construction and post-construction surveys"?

7 A. (Pelletier) That's correct. Usually, the  
8 pre-construction gives us a good sampling of the type  
9 of activity that's going on, the type of habitats.  
10 But, trying to correlate the passage rates, you know,  
11 the number of bat calls you get, and saying that that's  
12 going to equal X number of bird or bat mortality, those  
13 metrics don't exist.

14 Q. Okay. Thank you. Assuming you've done  
15 post-construction surveys and are finding some  
16 significant number of fatalities, can you explain what  
17 kind of mitigation can happen? What makes sense for  
18 existing projects to do at that point?

19 A. (Pelletier) If there's excessive mortality that was --

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would be documented?  
Q. Yes.  
A. (Pelletier) I think, trying to -- try to correlate what that mortality occurred from. Was it poor siting? Was it weather-related? That's, when you're doing your  
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post-construction studies here, those are the kinds of -- you're collecting data to help answer those questions. And, then, it would be depending on what you found from that. There are methods that the -- they get talked about as, you know, if, for instance, you got a particular species of bat that may be at risk, and you know that those particular bats may be at a very seasonal window when they would be doing some sort of activity, then there may be a couple of hours during the night when bats were actually in doing that activity, that should be seasonally isolated, that you could maybe modify your operations or something. I mean, those are the kinds of -- that's the direction that some are going.  
Q. Okay. Have you ever seen a facility, for instance, do that? Stop and have a turbine not in operation during a certain season or time of --  
A. (Pelletier) It's very rare. There was a study that was recently done to try to evaluate the effectiveness of that. And, the results of that study, that was a Casselman study, done by BCI, and it was completed last year -- completed this year, and they're actually -- they haven't really posted the results of that yet. But they're looking to see "is that effective?"

[WITNESS PANEL: Pelletier|Gravel]

- 1 Q. And, just by curiosity, are there -- I assume the speed  
2 of the blades must have some, no pun intended, impact?  
3 A. (Pelletier) Yes, it depends. Birds and bats kind of  
4 are a little bit different. The birds seem to be, and  
5 just to keep things in perspective here, it's a number  
6 we really haven't thrown out, but we usually see, say,  
7 two to three birds per turbine per year. That's the  
8 type of mortality that we're talking about. And,  
9 that's a mean. But, when you look at all of the  
10 samples that have been done, that's the kind of -- and  
11 most of those are migrating birds at night, and those  
12 are probably direct collisions.

13 But, with bats, you know, that number's  
14 higher, you know. And, there's a lot of work to be  
15 done. It seems like the studies further to the south  
16 have higher numbers. And, by that, I mean the coastal  
17 -- mid-coastal states. Those have been relatively  
18 higher numbers there. The farther north we're going,  
19 you know, we're seeing those numbers drop down. But,  
20 if we were to combine them all, and I'd really rather  
21 combine them regionally, you know, we're saying maybe  
22 20 bats per turbine per year. You know, and I guess I  
23 would -- I think, if you went to the farther north,  
24 that number would be much more reduced. But the type

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1 of impacts there is they don't know whether or not the  
2 bats are actually attracted to the turbines, or whether  
3 or not that's, you know, they're looking for insects.

4 So, they're trying to understand the behavior, what's  
5 going on there.

6 Q. But, again, just to clarify for me, does the speed of  
7 the blade matter? I mean, is that a factor?

8 A. (Pelletier) The speed of the blade has a pressure drop  
9 behind it. That sometimes it's not a direct collision,  
10 but it's -- they call it "barotrauma", which basically  
11 is a pressure drop in the lungs. It's like the lungs  
12 would burst in the bats.

13 Q. I'm sorry. Again, what I'm trying to get at is, is it  
14 an effective mitigation measure during certain times to  
15 limit the speed or feather the blade?

16 A. (Pelletier) That could be one outcome of it.

17 DIR. SCOTT: Thank you very much. Thank  
18 you, Mr. Chairman.

19 BY CHAIRMAN GETZ:

20 Q. Mr. Pelletier, I have one specific follow-up for you.  
21 I don't know if we really need to get out the  
22 reference. But, yesterday Ms. Linowes asked a question  
23 about Petitioner Exhibit 1.3, which is Volume 3 of the  
24 Application. And, it was Exhibit 21, Page 35. And,  
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1 this is Figure 4.3, and had the 11 days of observations  
2 of raptors. Do you recall that figure?

3 A. (Pelletier) Yes, I do.

4 Q. And, it shows that, apparently, there were between  
5 September 5, 2007 and October 15, 2007 there were 11  
6 days of observations. Did you -- I thought you said  
7 something of that about weather fronts? Were these  
8 days picked randomly or were they picked because of

9 some review you did of weather forecasts of upcoming  
10 fronts that may affect migratory patterns?  
11 A. (Pelletier) We have a number of days during the peak  
12 migration season that we want to be out there on the  
13 ground. And, so, the most migration will occur after a  
14 front moves through. So, we're picking those days,  
15 we're watching the weather, you know, during the course  
16 of every few days, "do we have a good day for migration  
17 to happen?" And, those, we pick those days, and we'll  
18 actually go out and following that. And, hopefully,  
19 you get a clear representation of migration as it's  
20 happening. Some days it's not -- migration is not  
21 happening at all. But we're trying to pick the days  
22 where we know that there's good migratory conditions.

23 CHAIRMAN GETZ: Dr. Kent, did you have  
24 --

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1 DR. KENT: Yes, I have several  
2 questions.  
3 BY DR. KENT:  
4 Q. These first three questions are for either one of you.  
5 Did you seek an opinion from Fish & Game and whether  
6 they concurred with your findings from your studies?  
7 A. (Gravel) Yes, we did. We had three technical sessions  
8 prior to submission of the Application, to go over the  
9 methods and results of each study, where we had Fish &  
10 Game, as well as other State and federal agencies in  
11 the room with us, where we presented, and, actually, I  
12 believe you were at one of those meetings, but it was  
13 the same forum where we would present the data that we

14 collected, and offer suggestions, comments, and  
15 questions.

16 Q. Correct. But did you get concurrence from Fish & Game?  
17 Did they say "We accept your findings. They're  
18 reasonable"?

19 A. (Gravel) We -- I don't know that we actually sought  
20 concurrence, but we allowed the opportunity to comment  
21 on these, and did not receive any.

22 A. (Pelletier) But you actually did meet with them prior  
23 to the track surveys that were done early in '07, and  
24 went over the processes.

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Gravel) That was before the results were done. So, I  
2 think your question is, "did they concur with what we  
3 found?" Is that correct?

4 Q. Yes.

5 A. (Gravel) We, like I said, we had offered -- we had  
6 offered the opportunity, and did not get concurrence or  
7 denial.

8 Q. Okay. Same question for Fish & Game. You sought an  
9 opinion from Fish & Game, when you had your findings  
10 from your study, and asked if they were in accordance  
11 with their thinking?

12 A. (Gravel) Are you talking Fish & Wildlife Service?

13 Q. Fish & Wildlife, I'm sorry.

14 A. (Gravel) Yes, we did. And, we received the letter that  
15 Ms. Linowes referenced yesterday, and also responded to  
16 that letter.

17 Q. From Vern Lang?

18 A. (Gravel) Yes.

19 Q. I thought -- I might have to see that letter. I  
20 thought that one reiterated the three-year methodology?

21 A. (Pelletier) It did.

22 Q. So, when you were completed with your studies and you  
23 shared them with Fish & Wildlife Service, did they say  
24 that "we agree with your conclusions"?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Pelletier) No, I think they, you know, I mean, this  
2 has been a very typical response from U.S. Fish &  
3 Wildlife Service, that they typically like to see three  
4 years.

5 Q. Okay. So, I would have to ask Fish & Wildlife Service,  
6 who are not on the witness list, whether they agree  
7 with your conclusions?

8 A. (Gravel) I think it's fair to say that that they  
9 didn't, based on that letter.

10 Q. Because of the three year issue?

11 A. (Gravel) Yes.

12 Q. Outside of that three year issue, do you -- can you  
13 speak to whether they were accepting of your  
14 conclusions?

15 A. (Gravel) I think that they're -- they would like to  
16 have seen some additional weather data. I don't think  
17 that beyond -- I don't think so, no.

18 A. (Pelletier) They wanted to see additional radar  
19 locations on some of the ridge tops. But, again, our  
20 survey results are -- they're very consistent. And, I  
21 guess, if you're asking whether or not they accept the  
22 data? I mean, the data is the data.

23 Q. No, I'm asking if they accept your conclusions.

24 A. (Pelletier) Oh.

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[WITNESS PANEL: Pelletier|Gravel]

1 Q. We've established, through testimony, that you have a  
2 different approach to your studies than perhaps the  
3 Fish & Game and Fish & Wildlife Service, to the extent  
4 that you've been able to elicit responses from them,  
5 correct?

6 A. (Pelletier) I would say U.S. Fish & Wildlife Service  
7 would like to see more.

8 Q. Correct. So, I'm asking, given that you had different  
9 approaches to this, were you able to get them to say  
10 "It looks reasonable what you've done. You've come up  
11 with something that's representative of bats, birds,  
12 including raptors"?

13 A. (Gravel) No, we did not. And, again, it goes back to  
14 the Guidelines, in that, I mean, we didn't follow the  
15 U.S. Fish & Wildlife Service Guidelines, like every  
16 other project. So, those were the reasons that they  
17 did not agree with our conclusions, because we did  
18 follow, you know, right from the start.

19 Q. And, with Fish & Game, did you have the same problem or  
20 are they reasonably in accordance with your findings?

21 A. (Gravel) They seemed in accordance with our findings.

22 Q. Thank you. Mr. Pelletier, you made a statement about  
23 "birds generally fly well above turbines", correct?

24 A. (Pelletier) That's correct.

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[WITNESS PANEL: Pelletier|Gravel]

1 Q. Then, I'm a little confused. Looking at Attachment 4,

- 2 there's a great many birds that seems -- a high  
3 percentage of birds, in some cases, that seem to fly  
4 within the bird -- within the turbine height, sometimes  
5 up to 89 percent? Am I misreading this?
- 6 A. (Pelletier) I have to make sure I'm reading the right  
7 table. Across the board of all the numbers of surveys  
8 that we've done, and, again, I don't have the number  
9 off the top of my head, but it's dozens and dozens,  
10 that -- of radar surveys, we're finding that the  
11 seasonal average, both spring and fall, is between 300  
12 and 600 meters above the ground, above where we've got  
13 the radar, which is usually above the -- on the  
14 ridgeline. And, in almost all cases, it's on the  
15 ridgeline. And, I mean it's just a matter of  
16 energetics for these birds. They're trying to get high  
17 above the turbulence at night, and it's a very  
18 comfortable place for them to be flying.
- 19 Q. So, are you referencing -- excuse me. Are you  
20 referencing post-construction studies --
- 21 A. (Gravel) No, I'm talking --
- 22 Q. -- when you make that comment?
- 23 A. (Gravel) No. I'm sorry. These are radar surveys that  
24 we're doing. And, they're typically done in  
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- 1 pre-construction studies. There's been a very limited  
2 number of post-construction radar studies, but the  
3 results would be the same.
- 4 MR. ROTH: Mr. Chairman, could I just --  
5 I think, with all do respect, I think you're asking about  
6 the raptor chart, which is Attachment 4.

GRP-DAY3.txt  
DR. KENT: Correct.

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8

MR. ROTH: And, it sounds like he's

9

talking about the migratory birds.

10 BY DR. KENT:

11 Q. Well, you're doing the raptor surveys are migratory  
12 surveys, correct?

13 A. (Gravel) Yes, that's correct. I think your question,  
14 though, asked about Attachment 4. And, yes, there are  
15 more, during the daytime raptor surveys, there have  
16 been more observations below turbine height. Whereas,  
17 what Steve is talking about, Mr. Pelletier is talking  
18 about, nocturnal radar surveys, which is in a different  
19 category.

20 Q. Right. Yes. And, I'm sorry if I wasn't clear. I'm  
21 talking about the migratory surveys. So, when you made  
22 the statement that "most birds are" -- "the birds are  
23 flying, in general, above the turbines", you weren't  
24 referring to Attachment 4?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Pelletier) I was referring to the radar surveys that  
2 we were -- and that's naturally based on the output of  
3 those.

4 A. (Gravel) That's Attachment 5.

5 Q. Okay. Thank you. Mr. Gravel, you made a comment that  
6 we would -- we "may increase the number of Bicknell's  
7 thrush in this area with the construction of this area?"

8 A. (Gravel) Yes, I did. I said it's a "possibility".

9 Q. A "possibility", I realize you're qualifying that.  
10 We're decreasing habitat, correct?

11 A. (Gravel) Yes, that's correct.

- 12 Q. A net decrease in habitat. And, perhaps you could  
13 explain to me again how we can decrease habitat and  
14 increase Bicknell's?  
15 A. (Gravel) Yes. The majority of habitat has been  
16 classified by a number of intervenors as "mature" or  
17 "primary forest", and along the ridgeline it's been  
18 mentioned as "old-growth forest", which is not  
19 considered high quality Bicknell's habitat. So, we're  
20 actually going -- So, as of now, there's a small  
21 percentage of those ridgelines that have suitable  
22 Bicknell's habitat, because Bicknell's prefer  
23 regenerating or early successional or dense regrowth  
24 balsam fir, whereas the ridgelines now are fairly  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 mature balsam fir. So, the creation of this edge is  
2 going to enhance or create more edge in regenerating  
3 stands. So, those -- So, it's going to actually create  
4 more habitat than you don't have already there.  
5 Q. How are we regenerating stands with roads and turbine  
6 pads?  
7 A. (Gravel) Well, right now, the habitat is not there for  
8 Bicknell's. So, those roads are going to go through  
9 this mature stand, and the edges of those roads will  
10 create succession of balsam fir, which isn't there at  
11 the moment. So, it's going to increase the amount of  
12 early succession, basically.  
13 Q. Okay. I don't want to get into the weeds here, but,  
14 typically, the Bicknell's are relying on wind throws,  
15 and the net result, if it's a wind throw, it sets us  
16 back to early succession. But the early succession is

17 a natural habitat, it's not a road or a pad for a  
18 turbine.

19 A. (Gravel) No, I think --

20 Q. So, do you have some, so that we can end this  
21 discussion, do you have -- is this your professional  
22 opinion or do you have some scientific evidence that  
23 the construction of roadways and turbine pads will  
24 increase the number of Bicknell's, that they will treat  
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[WITNESS PANEL: Pelletier|Gravel]

1 that developed habitat like early successional habitat?

2 A. (Gravel) We don't with turbine pads or roads, but we do  
3 with ski slopes, that are clear -- cleared ski slopes,  
4 where they have found higher reproductive success along  
5 the edges, versus the interior.

6 Q. All right. So, are you equating ski slopes, with roads  
7 and pads?

8 A. (Gravel) I am saying that it's a man-made disturbance.  
9 I'm not saying that they're identical, no.

10 A. (Pelletier) I just would add that the -- the very  
11 obvious, that the actual roads and pad constructions  
12 are a loss of habitat. It's what -- It's the  
13 Bicknell's' nesting preferences to be along the edge.  
14 And, there is no reason to believe that those edges  
15 wouldn't be something that they might seek out for  
16 nesting.

17 Q. And, my last question is in the same vein.  
18 Mr. Pelletier, you equated impacts on forestry  
19 operations to be the same as the impacts from road and  
20 pad construction. Could you explain that a bit for me?

21 A. (Pelletier) The gravel roads that are the haul roads

22 that are being developed out there to move wood out  
23 aren't going to be that dissimilar to the roads that  
24 are going to be built, for the most part. Now, and  
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[WITNESS PANEL: Pelletier|Gravel]

1 yesterday, obviously, there were some questions about  
2 blasting, I don't know the answer to those. And, I  
3 don't know exactly where or the extent of that. I have  
4 seen some blasting in other long-term managed areas  
5 that are, you know, there for larger companies, but  
6 that's usually pretty limited. So, if there is some  
7 blasting, then that would be atypical of a normal  
8 forestry operation. But the net result of having a  
9 road that's gravel, periodically traveled, you know,  
10 the effects might be very much the same.

11 Q. So, your statement about equating forestry operations  
12 and the project were simply about the road network, and  
13 not about forestry operations in Dummer?

14 A. (Pelletier) No, we didn't -- we haven't talked about  
15 the forestry operations, the silvicultural  
16 prescriptions, that I think that would be more better  
17 discussed once we have that conversation about what the  
18 mitigation plan is going to be about.

19 DR. KENT: Thank you both.

20 CHAIRMAN GETZ: I have one follow-up.

21 BY CHAIRMAN GETZ:

22 Q. And, it may be -- well, it could be for either of you.  
23 With the question about U.S. Fish and Wild Service --  
24 Fish & Wildlife Services and the Lang -- Mr. Lang's  
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1 letter that was the subject of much discussion  
2 yesterday. Is there anything in writing from U.S. Fish  
3 & Wildlife subsequent to that April 23, 2008 letter  
4 from Mr. Lang that's in the record?

5 A. (Pelletier) Not that I'm aware of.

6 A. (Gravel) There might have been two letters, and I --

7 CHAIRMAN GETZ: Well, if there's  
8 something else in the record from U.S. Fish & Wildlife or  
9 Mr. Lang that addresses this issue after that, that letter  
10 that we discussed for sometime, just have counsel point  
11 that out to us sometime this afternoon.

12 Are there -- Yes, Director Normandeau.

13 DIR. NORMANDEAU: Just a couple of quick  
14 questions.

15 BY DIR. NORMANDEAU:

16 Q. There was a breeding survey done, a bird breeding  
17 survey, is that correct?

18 A. (Gravel) Yes.

19 Q. And, while a separate raptor survey was not done, that  
20 breeding survey would have included any breeding  
21 raptors, if they had been seen?

22 A. (Gravel) Yes.

23 A. (Witness Pelletier nodding affirmatively).

24 Q. And, they were not, is that correct?

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1 A. (Gravel) I believe there was one merlin observed during  
2 those surveys.

3 Q. Okay. This Fish & Wildlife guidance that's been much  
4 talked about from 2003, I noticed on the -- in one of  
5 the paragraphs it says "The interim guidelines are

6 based on current science and will be updated as new  
7 information becomes available. They will be evaluated  
8 over a two year period and then modified as necessary,  
9 based on performance in the field." So, that's never  
10 happened since 2003?

11 A. (Gravel) Has not occurred. I think they're revisiting  
12 it now.

13 Q. That's what this process is that you were speaking  
14 about?

15 A. (Gravel) Yes.

16 Q. Five or six years later?

17 A. (Gravel) Yes.

18 DIR. NORMANDEAU: Six years. Okay.

19 That's all I have. Thank you.

20 CHAIRMAN GETZ: Mr. Harrington.

21 MR. HARRINGTON: Yes.

22 BY MR. HARRINGTON:

23 Q. Referring to the exhibit that was brought out  
24 yesterday, IWA-X-27, which is the "Guidelines for  
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[WITNESS PANEL: Pelletier|Gravel]

1 conducting bird and bat studies for commercial wind  
2 energy projects", dated January of this year.  
3 Obviously, you know, looking at your Attachment 4,  
4 which lists the raptor surveys that were done, all of  
5 these would have been performed prior to the issuance  
6 of this document in 2009. But there was, nevertheless,  
7 there was a number of them done in the State of New  
8 York. And, looking at the survey -- quick look at the  
9 survey days, I do not see any that were done in New  
10 York that had more than 11 survey days. Was there a

- 11 predecessor to this document that had some other  
12 recommendation to be used prior to January of 2009.
- 13 A. (Gravel) There was a draft that I think it came out in  
14 2008 that they opened, was open for comments.
- 15 Q. But none of the surveys that you list here were done in  
16 2008 either. So, maybe to put more a direct question,  
17 at the time you performed these surveys in New York for  
18 various wind projects, and came up with somewhere in  
19 the vicinity of 10 or 11 days, was there any guidance  
20 of this type published by the State of New York?
- 21 A. (Pelletier) Those were all direct meetings with the  
22 agencies, and agreeing that this would be the level of  
23 effort to take.
- 24 Q. Okay. And, there's been a lot of discussion on  
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[WITNESS PANEL: Pelletier|Gravel]

- 1 pre-construction, post-construction surveys, and, you  
2 know, how this goes about. And, I'm trying to get some  
3 of this straight in my mind, because I do have a few  
4 questions. I mean, I understand, on a pre-construction  
5 survey, it's basically observations, either through  
6 radar or through sightings by personnel, is that  
7 correct?
- 8 A. (Pelletier) Yes.
- 9 Q. And, based on that, you determine the number of raptors  
10 and other birds that you expect will be visiting the  
11 area of the turbines within the height of the turbine  
12 blades?
- 13 A. (Pelletier) I think what we -- we just report on what  
14 we observed.
- 15 Q. Okay. And, then, from that, how do you get to the

16 conclusion of "this is how many we observed in this  
17 area, so, therefore, do you make a prediction for avian  
18 mortality based on those observations?

19 A. (Pelletier) Well, typically, that's almost a separate  
20 task is our risk assessment. But we conduct the  
21 surveys, we report the results. We try to determine  
22 whether or not the site conditions or the population  
23 levels pose some, you know, undue adverse risk. And,  
24 so, I mean, that's generally the approach.

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[WITNESS PANEL: Pelletier|Gravel]

1 Q. Well, I guess I'm trying to get from, you know, we have  
2 these surveys where we list the number of sightings and  
3 so forth. But, by themselves, they have no meaning,  
4 other than the fact that you draw some conclusion as to  
5 this number of bats or this number of raptors or  
6 whatever, should we calculate, result in so many  
7 fatalities or injuries to that animal if wind turbines  
8 were installed there. Otherwise, we really don't care  
9 how many go by the area. We're only interested in the  
10 ones that may be affected by the presence of the wind  
11 turbines, is that correct?

12 A. (Gravel) Yes. We never can get specific with numbers.  
13 But, what we do with our pre-construction results is we  
14 compare them to other studies, first of all, to see if  
15 there's any red flags. I mean, is this site a lot  
16 different than any of these other studies that have  
17 been permitted? Then, the next step we will do, just a  
18 relative assessment on, we'll look at those studies  
19 that have conducted pre-construction surveys, that have  
20 been constructed, and then have been followed by

21 post-construction studies. So, we'll take that  
22 pre-construction data, compare it to the  
23 pre-construction data of a developed project, and then  
24 we would look and see "well, this is consistent or  
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1 lower or higher than that project, and this is what  
2 they found post-construction for fatalities." So,  
3 we'll kind of try to put it in perspective that way,  
4 but we are still not at the point where we can quantify  
5 and say, you know, "Ten bats will collide with these  
6 turbines."

7 Q. Okay. So, it's a very qualitative analysis then?

8 A. (Gravel) Yes. Yes.

9 Q. Okay. And, I want to get back to that in just a  
10 second. But the post-construction or post-operation, I  
11 guess is probably more accurate, studies to be done,  
12 I'm just trying to determine how they're performed.  
13 And, let me give you my question so it will give you  
14 the direction of where it's going. You know, if  
15 there's a bat flying through the air and it has a  
16 barotrauma accident or it hits the wing and it crashes  
17 to the ground, I don't think there's an automatic bat  
18 detection/collection thing on the ground. So, it could  
19 sit there for quite some time before someone comes out  
20 and does a survey. It could be months, I'm assuming.  
21 And, during that time, you know, an animal could run  
22 off with that bat, an animal could have half eat the  
23 bat, the body could decay. And, it would be rather  
24 difficult, short of an autopsy, which I doubt anybody

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1 is doing on bats or any other birds, to determine what  
2 the cause of death was. I mean, if you saw it  
3 immediately after it hit the turbine, you could  
4 probably say "Well, it was chopped in half." But, if  
5 it's a few weeks later, I don't think people are going  
6 to be able to make that determination. So, how does  
7 one determine then, how do you do a post-operation  
8 survey, with any sense of accuracy, to come up with how  
9 many of these animals were actually killed by the  
10 presence of the turbine?

11 A. (Pelletier) It's actually a very detailed process that,  
12 again, like all these things, continue to evolve. But  
13 they typically will concentrate surveys in an area  
14 that's about, you know, generally representative of the  
15 rotor zone. They have, over the course of time that  
16 we've been monitoring these things, and others have  
17 been monitoring, they're getting an understanding of  
18 how far birds and bats may fall from the turbines. So,  
19 we have a search area. And, then, it's a matter of  
20 visiting during the migration periods, some even  
21 longer. But there's very systematic surveys that  
22 you're doing, usually getting up, you know, prior to  
23 before dawn, and some surveys -- most surveys are done  
24 on a weekly basis, but you're visiting some turbines on

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1 a daily basis. And, there's a grid pattern that you'll  
2 follow. And, the process for scavenger removal is  
3 something that's tested by putting animals out there

4 and seeing how long they remain. The process of  
5 searcher efficiency, whether or not they're detected,  
6 is also tested by putting things out there unbeknownst  
7 to the people who are doing the surveys to see if  
8 they're collected. And, that's -- it's a very rigorous  
9 statistical analysis of -- we can have a certain number  
10 of bats that we will or -- and birds that we'll find  
11 under a turbine, but that's not the mortality. The  
12 projected mortality will include the analysis of "how  
13 many did they miss during that, the searcher  
14 efficiency?" "How many were removed?" So, to come up  
15 to a theoretical number at the end.

16 Q. Okay. And, just get back to the same, just one  
17 follow-up on that. Was there any -- is there any  
18 attempt to determine the mortality of the various  
19 species by actual species count? By that I mean, in  
20 the Northeast, you know, pre -- or some zone,  
21 pre-construction of a major wind turbine, and maybe I'm  
22 thinking more of something in another part of the  
23 country where there may be hundreds and hundreds of  
24 turbines, there's some estimate of the population of  
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1 the whatever. And, now, four years of operation later,  
2 is there a new estimate? Because, I mean, that's  
3 really the bottom line. Because, even all those things  
4 you mentioned, you could have, you know, there could be  
5 weather-related fatalities, there could be disease, I  
6 know there's some disease affecting bats in New  
7 Hampshire right now, I don't know exactly what it is,  
8 but I know it's been in the paper a number of times.

9 Is there any of those attempts of surveys done, to try  
10 to actually look at post- and pre- population, rather  
11 than just, you know carcasses?

12 A. (Pelletier) The big, big question is, what do we know  
13 about the populations, the overall populations. And,  
14 there's a number of different types of programs that  
15 are out there that, you know, give you a very general  
16 sense of how -- what kind of changes, how big certain  
17 bird populations are, but that's the big unknown. But,  
18 you know, to the question of looking at  
19 post-construction results, there's a lot of interest in  
20 which species, is there a trend for any particular bird  
21 to be showing up or bats in a particular season. So,  
22 there's a lot of work that's being done. And, you're  
23 also not just looking for full carcasses, but what is a  
24 mortality? Is a feather spot, you know, two or three

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[WITNESS PANEL: Pelletier|Gravel]

1 primary feathers considered a kill? So, it's really  
2 looked at in depth.

3 Equating, again, it's a relatively low  
4 number with the birds, you know, on the order of two to  
5 three per turbine per year, and with the bats, just a  
6 limited number, anywhere 15 to 20 per turbine per year.  
7 You know, it depends on -- those are the kinds of  
8 numbers you're seeing. Are they having an effect on  
9 the local populations, the regional populations?  
10 That's, again, one of the Holy Grail questions.  
11 Relatively low numbers, though.

12 Q. So, for right now, it's safe to say that we're dealing  
13 with pretty gross estimates on all of this stuff?

14 A. (Pelletier) Gross population -- Larger the populations,  
15 but the actual identifying the amount of mortality, I  
16 think, if it's a properly conducted study, you're  
17 getting a pretty good understanding of what is actually  
18 happening under those turbines.

19 Q. Then, going to that then, we discussed yesterday, and  
20 I'm not sure if we reached a conclusion, as to how many  
21 sites that there actually was available, and I'm not  
22 quite sure why it wouldn't be public information, but  
23 was the term used, post-operation mortality surveys,  
24 and how many of them are available that -- where you  
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1 people have worked on them or using similar methods as  
2 yours?

3 A. (Pelletier) We think we've got 14 in our table here  
4 that are publicly available. And, again, I think  
5 that's -- you're going to see a big blossoming of new  
6 data that's come in. And, it's just like the survey  
7 question about -- the radar survey about heights.  
8 There are more and more of these things that have  
9 happened since. 2004 was one of the first radar  
10 surveys. And, then, 2005, the number an order of  
11 magnitude, 2006, 2007. We're collecting a great deal  
12 of data right now. And, you know, and the  
13 post-construction element is several years behind that,  
14 because you're ending up to start building these  
15 things. So, that's the problem, but --

16 A. (Gravel) May I add to that?

17 Q. Sure.

18 A. (Gravel) Just there's a number of post-construction

19 survey results available, publicly available. But the  
20 difficulty right now is there are very few that have  
21 both pre-construction survey data and post-construction  
22 survey data. So, that's the -- where we're finding is  
23 pretty valuable. And, once we start getting more of  
24 these studies that have conducted pre-construction

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- 1 surveys and post-construction surveys. And, that's  
2 kind of the hole right now, too, is that there's very  
3 few available.
- 4 Q. Well, that may work well for this hopefully in the  
5 future, but, for right now, we have to deal with this  
6 project and what's available. So, do you know of any  
7 cases where, using methods similar to done by  
8 yourselves in this project, that there was a gross  
9 discrepancy between this, and I know it's a quality --  
10 it's very much a qualitative thing where you felt as  
11 though it will do no significant harm to the avian  
12 population, where, after it was in operation, and these  
13 very detailed post-operational mortality surveys were  
14 done, that that conclusion was contradicted?
- 15 A. (Gravel) For birds, it's pretty similar. But, for  
16 bats, there's been a contradiction, especially in the  
17 Mid-Atlantic states.
- 18 Q. Okay. Using the same type of techniques that you  
19 perform -- you used here?
- 20 A. (Gravel) Yes, that's correct.
- 21 Q. And, what were those specifics that you were talking  
22 about there? The bats one?
- 23 A. (Gravel) That there are a couple of studies in West

24 Virginia and Iowa.

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1 A. (Pelletier) And Maryland, yes.

2 Q. And, the post-operation mortality of the bats greatly  
3 exceeded what was predicted by the pre-construction  
4 analysis?

5 A. (Gravel) Yes, I believe it was a surprise to --

6 Q. And, out of those, is there anything in those locations  
7 that are similar to New England? Or, is there  
8 something that's completely different, such that that  
9 type of conclusion could not be transferred to New  
10 England?

11 A. (Gravel) I think there's a big difference there.

12 There's more -- There's more bats, more bat species,  
13 and a longer warm climate. You know, up here, you're  
14 looking at a short growing season, a short period of  
15 time when bats are active. And, in this particular  
16 case, I would think that, I mean, there is only one  
17 study conducted on a forested ridgeline  
18 post-construction, and that was Mars Hill, Maine.

19 Q. Uh-huh.

20 A. (Gravel) And, that we feel like it's going to be more  
21 similar to that site than a Mid-Atlantic state.

22 Q. And, the results in the post -- the pre-construction  
23 versus post-operation for Mars Hill were consistent  
24 using these methodologies?

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1 A. (Gravel) It was actually much lower in that case.

2 A. (Pelletier) The methods were consistent. The numbers  
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- 3 that we found at Mars Hill were what, 0.4 fatalities  
4 per turbine per year. I think that's the number.
- 5 A. (Gravel) Yes.
- 6 A. (Pelletier) But, as Adam says, in the mid-Coastal  
7 states, you've got a longer season that bats are  
8 active, that more species, more higher numbers, and  
9 probably -- and a lot more numbers of bats that are  
10 migrating from the north funneling through than what we  
11 have up north. Being farther north, I'm not saying  
12 that there's -- it just appears that the risk may be  
13 somewhat lower.
- 14 Q. So, it sounds like some of the assumptions made in  
15 these studies that were done in these Lower Coastal  
16 states were just inaccurate or not correct?
- 17 A. (Pelletier) No, I think they're representative of the  
18 conditions in West Virginia and Ohio and Maryland.
- 19 Q. No, I meant the assumptions that were done as part of  
20 their pre-construction analysis, because why was the  
21 pre-construction numbers or estimates so much lower  
22 than what was the reality of bat kill. Must have made  
23 some incorrect assumptions.
- 24 A. (Gravel) Well, I think it was a surprised in terms of  
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- 1 how many were killed. But I just want to point out,  
2 too, when you compare pre-construction metrics that we  
3 -- like we used at this site, to those same metrics and  
4 methods that were at those Mid-Atlantic sites, for  
5 example, bat activity is the metric that we're using  
6 for Anabat detectors, acoustic bat detectors. They  
7 were significantly higher. You would have an overall

8 bat activity rate of right around 30 to 50 calls per  
9 detector per night in a Mid-Atlantic state. Whereas,  
10 up here, you have less than one call per detector per  
11 night. So, I mean, there's still -- there's still a  
12 discrepancy between regions based on pre-construction  
13 data, too. But, in terms of the actual killed, I think  
14 it was a surprise down there.

15 Q. So, getting to ones that are most similar to here, you  
16 would say it would be the Mars Hill Project. And, in  
17 conclusion, there the post or the pre-construction  
18 analysis was validated by the post-construction actual  
19 findings of mortality?

20 A. (Pelletier) I'm not -- I'm not sure that one really  
21 validates the other. But there was an assumption that  
22 mortality would be low. Two years of data so far  
23 collected a Mars Hill shows that it's been low.

24 MR. HARRINGTON: Okay. Thank you.

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1 That's all I had, Mr. Chairman.

2 CHAIRMAN GETZ: Mr. Northrop.

3 MR. NORTHROP: Thank you, Mr. Chairman.

4 BY MR. NORTHROP:

5 Q. Actually, this is a follow-up to Mr. Harrington's, or  
6 sort of along the lines of his questions, about those  
7 cases in the South or other parts of this country,  
8 where there's been a discrepancy between the  
9 pre-construction study and the actual post-construction  
10 study. Were there any changes to the operations of the  
11 towers or how did that -- were there any mitigation  
12 that took place? Or, sort of what was the result to

13 the operation of the facility, based on the data from  
14 the post-construction study?

15 A. (Pelletier) None that I'm aware of. Except, again, I  
16 guess the Casselman study was one that they're trying  
17 to address, whether or not that would be a good  
18 response. But I'm not sure of any operational  
19 constraints that have gone on for any of these things.

20 A. (Gravel) No.

21 A. (Pelletier) What they have done is maybe tightened up  
22 the monitoring. And, in some places they're trying to  
23 do more behavioral studies. Trying to understand, "are  
24 bats attracted to these things or are they just banging

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1 into them?"

2 Q. So, they haven't shut towers down or made them stop  
3 operations in certain times of the day or time of the  
4 year, right?

5 A. (Gravel) Except for that one study he referred to as  
6 the "Casselman Project", I believe that was  
7 Pennsylvania.

8 A. (Pelletier) Pennsylvania. And, that was trying to  
9 determine whether or not, you know, if seasonal  
10 feathering nightly, feathering hourly, feathering may  
11 have an impact.

12 Q. Did they actually stop the tower from -- stop the  
13 turbine from operating?

14 A. (Pelletier) Yes.

15 Q. Okay.

16 A. (Pelletier) They kept some going as controls, turned  
17 off others.

18 MR. NORTHROP: Okay. Thank you.

19 CHAIRMAN GETZ: Mr. Scott.

20 BY DIR. SCOTT:

21 Q. A similar question. You do the post-construction  
22 mortality study, I assume you must use some criteria to  
23 decide "no further action required" or "we need to look  
24 more" or "we need to look at mitigation measures",

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[WITNESS PANEL: Pelletier|Gravel]

1 where do you get the criteria from? Where is that?

2 What do you do?

3 A. (Pelletier) I think those are, again, in individual  
4 discussions with the agencies, and just an evolution,  
5 as we gain more knowledge here. But, from what I'm  
6 seeing so far, from most post-construction surveys,  
7 there hasn't been. It's been "Here's the data. Here's  
8 what we found. Thank you very much." No operational  
9 constraints afterwards. I think everybody's always  
10 looking for these big kills to happen. And, you know,  
11 there were some surprises in 2004/2005 down in the  
12 Coastal states, where all of a sudden you're looking  
13 for birds and start seeing bats, and that was a big  
14 surprise. But, since then, all our studies have been  
15 adjusted to try to account for what's going on.

16 CHAIRMAN GETZ: Other questions from the  
17 subcommittee? Mr. Iacopino.

18 MR. IACOPI NO: I have a couple, Mr.  
19 Chairman.

20 BY MR. IACOPI NO:

21 Q. First of all, just for the record, it's my  
22 understanding that the Fish & Wildlife Guidelines are

23 not codified in the Code of Federal Regulations, is  
24 that correct?

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[WITNESS PANEL: Pelletier|Gravel]

- 1 A. (Pelletier) That's my understanding.
- 2 Q. And, they're not part of any federal statute?
- 3 A. (Pelletier) That's my understanding.
- 4 Q. You stated, and this goes a little bit to what you've  
5 just been discussing about this pre- and  
6 post-construction studies, but that there does not  
7 appear to be a correlation between pre-construction  
8 studies and eventual mortality?
- 9 A. (Gravel) That's correct.
- 10 Q. Is that because those -- because there have been  
11 studies done that have concluded there is no  
12 correlation or is that just because nobody's done those  
13 studies?
- 14 A. (Gravel) They have done those studies. Part of the  
15 problem with correlating is that you have very low  
16 mortality. So, you have very little data to correlate  
17 to. You know, over a post-construction monitoring year  
18 would consist of, you know, April 15th-ish to the  
19 end of October. And, if you have only, you know, if  
20 you find 20 dead animals during that whole time period,  
21 there's many days where you don't have any data to  
22 correlate with. But the other issue is that not a lot  
23 of pre-construction surveys are occurring  
24 simultaneously with wind turbines.

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Pelletier) It's interesting, because, as a follow-up,  
2 is that some of the data points that we'll look at,  
3 that the State agencies will want to look at, will get  
4 columns of -- to record particular mortality, with the  
5 assumption that, as you're walking through this site,  
6 that you're going to be picking these things off the  
7 ground under each turbine. When, actually, you'll do a  
8 whole wind facility, and during the course of the year  
9 there's a limited number of individuals that you're  
10 finding. So, I think that's part of just the learning,  
11 that there's not the mortality that's maybe sometimes  
12 expected, it's not seen. So, it makes it difficult to  
13 correlate when you find it, with weather, with  
14 conditions at the turbine.

15 Q. Mr. Gravel, yesterday, when you were being  
16 cross-examined by Ms. Linowes about the New York  
17 standards, you made a statement that "one of the  
18 standards wouldn't apply because there was no data that  
19 supported that there was a high raptor concentration or  
20 funneling in the vicinity of the Project."

21 A. (Gravel) Yes.

22 Q. Do you recall making that statement?

23 A. (Gravel) Yes, I do.

24 Q. And, what do you base that statement on?

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[WITNESS PANEL: Pelletier|Gravel]

1 A. (Gravel) Well, I base that statement on known hawk  
2 concentration areas by established Hawk Watch sites,  
3 HMANA Hawk Watch sites, but also through consultation  
4 with the State and federal agencies. That would be  
5 right before we do any pre-construction surveys, we

6 send letters requesting information of natural resource  
7 areas or habitats of concern. And, those were also not  
8 identified.

9 Q. Okay. But is that something that's specifically  
10 requested, "what is" -- "where are your high raptor  
11 concentrations?" "Where are your raptor funneling  
12 lanes or whatever they're called?"

13 A. (Gravel) I don't know that it's spelled out. But we  
14 ask for all concerns. And, then, the other, you just  
15 -- you then try to confirm that with your study. So,  
16 you then put that into respect with other established  
17 Hawk Watch sites and other pre-construction surveys,  
18 using the same level of effort or similar level of  
19 effort.

20 Q. And, then, Mr. Pelletier, today you said that you did  
21 not think that the -- that you thought that the risk of  
22 -- well, I'm not sure what the conclusion was, but it  
23 was with respect to the question of "birds perching on  
24 the overhead lines", and you indicated that the -- I

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1 don't know if you said the "risk of them perching there  
2 is limited", but I think the "risk of them coming to  
3 harm as a result of perching there is limited". First  
4 of all, which conclusion was it?

5 A. (Pelletier) I'm sorry if I was confusing there. The  
6 structures are occasionally used for perching. It's  
7 not something that you see, and some mortality occurs  
8 in some places. But it's not something under  
9 rights-of-way that we're seeing a lot of mortality. I  
10 think the risk for losing raptors with the transmission

- 11 line is very, very, very limited.
- 12 Q. Is that based solely upon your experience with the  
13 roadway? In other words, it's based solely upon your  
14 experience of raptor behavior with other overhead  
15 lines?
- 16 A. (Pelletier) That's correct. And, we've done quite a  
17 bit of work with utility agencies, with groups, and  
18 done a lot of evaluations of right-of-ways. It's not  
19 like we're seeing -- I can't recall ever finding a dead  
20 raptor in a right-of-way.
- 21 Q. Okay. But there's not usually wind turbines in those  
22 rights-of-way or near those right-of-ways, am I  
23 correct?
- 24 A. (Pelletier) I guess I'm isolating, I'm distinguishing  
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- 1 the difference between the turbines and the  
2 transmission line itself. I'm not sure that it's --  
3 that it's not as though the turbines are going to be  
4 attracting raptors or anything. I guess I'm not  
5 following the question.
- 6 Q. Well, I didn't quite understand the answer, that's why  
7 I was wondering if you were talking about the raptors  
8 perching, if that's what was limited? Or, if you're  
9 saying that the risk of raptor mortality where there is  
10 an overhead line in proximity to a turbine is what's  
11 limited? Or both?
- 12 A. (Pelletier) There is --
- 13 Q. I mean, but why, is the next question?
- 14 A. (Pelletier) Well, I mean, yes, occasionally you'll see  
15 turkey vultures, some raptors, red-tails perching on

16 transmission lines or on the structures. But the risk  
17 of mortality, I believe, is very low.  
18 Q. Okay. And, lastly, the photographs that you were shown  
19 yesterday by Ms. Linowes, if I could just get them for  
20 one second. You indicated that you didn't recognize  
21 the particular projects. But, in your  
22 post-construction studies, do you have the opportunity  
23 to see the completed projects when they're done, after  
24 everything? I mean, I would assume they're mostly  
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1 after the sites are in service, is that correct?  
2 A. (Pelletier) That's correct.  
3 Q. The ledge cut there, is that typically the way that a  
4 access road to wind turbines is left after  
5 construction?  
6 A. (Pelletier) I've never seen a ledge cut like this.  
7 MS. GEIGER: Mr. Iacopino, these  
8 questions might be more appropriately deferred to --  
9 MR. IACOPI NO: To Mr. LaFrance?  
10 MS. GEIGER: Yes.  
11 MR. IACOPI NO: Okay. That's fine. I'll  
12 ask him. I have no other questions, your Honor.  
13 CHAIRMAN GETZ: Dr. Kent.  
14 DR. KENT: Yes, just one more question.  
15 BY DR. KENT:  
16 Q. Getting to this issue of level of effort, a difference  
17 of opinion with Fish & Wildlife Service. When you  
18 determine a level of effort necessary, are you looking,  
19 plotting out level of effort, versus return on effort?  
20 Is that how you come to a conclusion about "you've made

21 enough effort out there"?

22 A. (Pelletier) To take on any one of these surveys can be

23 an expensive process. You're putting people out in the

24 field for long, extended periods of time. Mobilizing a

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1 lot of equipment. So, it's not something you do

2 without some thought in it. But, essentially, are you

3 -- when's the right time? How long do you need to be

4 out there? That level of effort is something that

5 we've been working out over a number of years, a number

6 of different projects and discussions with agencies.

7 And, this is the type of pattern. It's not something

8 that's done on a willy-nilly basis by any means.

9 Q. No, I wasn't suggesting that it was "willy-nilly". But

10 do you know -- have you tried to plot a level of effort

11 versus a return to define what's a reasonable effort,

12 forgetting -- setting aside for a moment mitigating

13 factors like willingness of the client to pay or amount

14 of time you might have available to do things, just to

15 reinforce your conclusions that this is adequate and

16 we've gotten representative information?

17 A. (Pelletier) We did one study, after a number of years

18 of collecting data, and there were some states, in New

19 York, for example, was looking for 40 nights -- 45

20 nights, as many as 60 nights of radar surveys early on.

21 And, trying to understand "well, what does it take to

22 actually get a statistically valid study?" And, we

23 looked back at our data over a number of different

24 projects, and analyzed 60, 45, I think it was 25 and 20

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- 1 day increments, and I believe that was the number.
- 2 A. (Gravel) It was 60, 45, 30, 20, and then 15. So, we
- 3 randomly selected those samples, that number of samples
- 4 out of that full 60 night survey.
- 5 Q. (Pelletier) And, from that, what we were trying to do
- 6 is, "at what point does our confidence in the data
- 7 start falling apart?" And, we were statistically able
- 8 to show that 20 nights of survey, of radar survey, gave
- 9 us a number that was consistent with the findings all
- 10 the way up to 60 days, and things started falling apart
- 11 after that.

12 DR. KENT: Thank you.

13 CHAIRMAN GETZ: Any further questions

14 from the Subcommittee?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. Hearing nothing,

17 then let's regroup on where we are, in terms of process

18 for the rest of the day. I would suggest that we defer

19 redirect by the Applicant until all of the issues with

20 respect to this panel are complete. And, I want to make

21 sure I understand -- and, so, I guess, for this panel, as

22 I understand it, the next step would be to -- or, the

23 proposal anyway is to have an oral summary of the High

24 Elevation Mitigation Settlement Agreement. And, then --

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- 1 and, Dr. Publicover would participate in that panel?
- 2 What's the proposal with respect to Dr. Publicover?

3 DR. PUBLICOVER: No.

4 MR. PATCH: Just to leave him testifying

5 in the same order he's in now, and then he could answer  
6 questions at that time about it. But I think the idea was  
7 just to have a Noble representative, with a capital "N",  
8 and sit here as part of this panel and discuss the  
9 mitigation, the High Elevation Mitigation Plan.

10 CHAIRMAN GETZ: Okay. And, who would  
11 that be? Recalling --

12 MR. PATCH: Mr. Lyons.

13 CHAIRMAN GETZ: -- Mr. Lyons to sit with  
14 -- to make it a panel of three, --

15 MR. PATCH: Yes.

16 CHAIRMAN GETZ: -- to have a brief oral  
17 summary of the Settlement Agreement. And, then, we would  
18 turn to cross-examination with respect to their prefiled  
19 testimony as it relates to the high altitude habitat and  
20 the Settlement Agreement, the Mitigation Plan. That's the  
21 proposal?

22 MS. GEIGER: That sounds good, Mr.  
23 Chairman, I just want to make sure that the parties are  
24 clear that any cross-examination that occurs by parties

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1 who have already conducted cross-examination will be  
2 limited only to questions about the High Elevation  
3 Mitigation Plan, and that they would not be able to  
4 revisit any of the issues regarding the testimony that's  
5 been given thus far in response to questions on  
6 cross-examination and from the Committee.

7 CHAIRMAN GETZ: But the questions could,  
8 to the extent that the underlying prefiled and  
9 supplemental testimony spoke to the issues of high level

10 habitat, then that's something that's within the scope.  
11 Okay. Any thoughts from the parties on that approach,  
12 concerns, objections agreement?

13 MR. ROTH: I guess, if what's being  
14 proposed is to essentially have cross-examination on this  
15 document, which I haven't read yet, this afternoon, I  
16 think that's a little tight. And, if that's going to be  
17 the limit of the ability to ask any questions, I mean,  
18 it's possible I'll read it and I won't have any questions  
19 at all. But, until I do that and think about it a little  
20 bit, it's going to be difficult to know what to say. And,  
21 I guess I would prefer that there be, as I said earlier, a  
22 meaningful opportunity to cross-examine the witnesses  
23 about this Agreement, if any is needed at all.

24 CHAIRMAN GETZ: Okay. Well, I guess the  
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1 first step in that then is to hear from the witnesses  
2 about how this Agreement comports with the broad outlines  
3 in their testimony.

4 MR. ROTH: Mr. Chairman, I would also  
5 add that we also still don't have Ms. Keene, and I know  
6 that Ms. Keene would be very interested in cross-examining  
7 these witnesses about this Agreement. That would be my  
8 guess, anyway. At the same time, I have no objection to  
9 there being an oral presentation from Mr. Lyons or anybody  
10 else about what's in this Agreement. But, as far as  
11 testing it, I think that should reserved for another time.

12 CHAIRMAN GETZ: Well, my understanding  
13 from counsel is Ms. Keene has indicated that she only has  
14 cross-examination for the Fish & Game witnesses?



20 everyone. We're back on the record in Site Evaluation  
21 Committee Docket 2008-04 on the Application for Granite  
22 Reliable -- are we ready to get back on the record?

23 Okay. We have a panel that's prepared  
24 to address orally a High Elevation Mitigation Settlement  
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1 Agreement. We had some discussion prior to the lunch  
2 recess about how we would proceed this afternoon. I think  
3 the better course is to get the information orally on the  
4 record, and then have the -- excuse this panel, and then  
5 turn to the LaFrance/Lobdell panel, and go through their  
6 direct and cross-examination. And, then, after that panel  
7 is complete, hopefully that's done this afternoon, then we  
8 would turn to Ms. Linowes, who would provide her direct,  
9 and then an opportunity for cross. And, if we have time  
10 available, then we would go to Dr. Publicover after that.  
11 And, we'd have to take stock again at the end of the day  
12 to see how much more we have to do between today and  
13 witnesses on Friday, and potentially next week.

14 So, any questions before we hear from  
15 the panel? Director Normandeau.

16 DIR. NORMANDEAU: Mr. Chairman, I just  
17 thought I would -- wanted to say before the discussion  
18 starts or the presentation, just for the public to be  
19 aware of the fact that this Mitigation Plan was worked out  
20 with the staff from Fish & Game, and that today is the  
21 first time I've seen it. Other than knowing a discussion  
22 was on, I had no involvement whatsoever with this plan,  
23 nor did I know the particulars until I've had this in  
24 front of me today. So, just to state that on the record

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1 for the purpose of full information.

2 CHAIRMAN GETZ: Okay. Thank you. Okay.  
3 Then, and, Mr. Patch, were you going to do a direct or how  
4 were you going to proceed with the oral summary?

5 MR. PATCH: I hadn't planned that, but I  
6 think maybe if we just ask Mr. Lyons if he could do a  
7 summary of that. That might be the simplest thing to do.

8 CHAIRMAN GETZ: Okay. Please proceed.  
9 (Whereupon Mark Lyons was recalled to  
10 the stand to join the witness panel of  
11 Steven Pelletier and Adam Gravel.)

12 MARK LYONS, Previously sworn

13 BY THE WITNESS:

14 A. (Lyons) Okay. I guess technically this would  
15 constitute an update to my supplemental testimony in  
16 February, where I had indicated that we were in  
17 negotiations with the New Hampshire Fish & Game  
18 Department and the Appalachian Mountain Club, to reach  
19 an agreement in settlement of the issues regarding  
20 mitigation of impacts on high elevation habitat. And,  
21 so, the update is that we have reached such an  
22 agreement. And, if I might just summarize the main  
23 points of that Agreement.

24 Under this Agreement, Granite Reliable

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1 Power, as the Applicant, would purchase lands that were  
2 indicated by Fish & Game and Appalachian Mountain Club

3 as being of interest to them, because of their value as  
4 high elevation habitat and forest type within the  
5 Project area. And, so, of those areas that were  
6 identified, we went and negotiating with our two main  
7 landowners. Initially, there was discussion about  
8 placing conservation easements on these large parcels,  
9 but we were successful in negotiating options to  
10 purchase them outright. And, so, our agreement is that  
11 we would -- we would purchase the tracts that I will  
12 detail in a second in fee title for the State of New  
13 Hampshire, to be managed by the New Hampshire Fish &  
14 Game Department, and to be preserved in perpetuity.  
15 And, the tracts include, these are all high elevation  
16 sites, which are defined as being at or above 2,700  
17 feet in elevation. And, on Mount Kelsey, the area  
18 surrounding -- the top of the mountain surrounding the  
19 wind turbine string that we would place there would be  
20 preserved. And, it constitutes approximately  
21 1,281 acres. On Long Mountain, we would purchase  
22 approximately 220 acres. On Mui se Mountai n,  
23 approximately 60 acres. And, then, in the  
24 Baldhead/Nash Stream area, we had already been in

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1 discussion about preserving a large tract for wetlands  
2 mitigation. And, we were able to expand that somewhat,  
3 and include 174 acres of high elevation habitat within  
4 the wetlands mitigation parcel. So, that the total  
5 number of high elevation acres that would be preserved  
6 under this Agreement would be approximately  
7 1,735 acres. And, in addition to that, this Agreement

8 covers the fact that we will purchase in fee  
9 approximately a 620 acre conservation parcel on  
10 Phillips Brook, for mitigation for wetland impacts.  
11 And, once again, that title would be transferred to New  
12 Hampshire Fish & Game or other appropriate State agency  
13 on behalf of the State of New Hampshire.

14 Within all of these parcels, protection  
15 would be governed by the following provisions: Future  
16 development/timber harvesting would be prohibited,  
17 unless specifically requested or approved by Fish &  
18 Game to meet specific habitat improvement needs.  
19 Motorized recreational activities would be prohibited.  
20 No additional roads or structures would be allowed.  
21 And, in addition to those conservation parcels, we have  
22 agreed to provide to Fish & Game an additional \$750,000  
23 to purchase additional lands that they identify as  
24 being of value, for permanent conservation for  
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1 comparable habitat outside of the Project area. And,  
2 in addition to that, we have agreed to make a one-time  
3 payment of \$200,000 to Fish & Game to be used to  
4 conduct studies of the impacts of the development on  
5 use of the area by American marten, Bicknell's thrush,  
6 and/or other wildlife species of concern.

7 So, that's the -- that's the gist of our  
8 Agreement. And, we're very pleased to have been able  
9 to reach the agreement. And, it's our view that this  
10 mitigation package, given the fact that it will be  
11 restrictive of commercial timber harvesting and other  
12 development in the conserved areas, will actually help

13 protect more high elevation habitat than would be  
14 protected in this Project area without our proposed  
15 windpark.

16 CHAIRMAN GETZ: Okay. That completes  
17 the summary?

18 WITNESS LYONS: Yes, sir.

19 CHAIRMAN GETZ: And, do Mr. Pelletier or  
20 Mr. Gravel want to address this in any way?

21 MS. GEIGER: I think what should happen,  
22 Mr. Chairman, is that there are a number of values,  
23 quantitative value in terms of acreages that were  
24 mentioned in the supplemental prefilled testimony submitted  
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1 by these witnesses, that I believe should be updated so  
2 that the record is clear. And, so, what I would propose  
3 to do is just have Mr. Gravel run through very quickly the  
4 couple of pages that contain erroneous information, if you  
5 will, to make sure that the correct information that's  
6 contained in the Settlement Agreement is accurately  
7 reflected in their supplemental prefilled.

8 CHAIRMAN GETZ: Okay. That would be  
9 very helpful.

10 MR. ROTH: Mr. Chairman, I guess I -- I  
11 don't want to sound difficult about it, but I would  
12 prefer, rather than object to it, I would preserve that,  
13 instead of running through a list and numbers and people  
14 flipping through the documents and marking them, that the  
15 Applicant file some statement clarifying the testimony, so  
16 that everybody has the same document in their hand,  
17 without it being --

18 CHAIRMAN GETZ: Well, is it -- would it  
19 be a statement clarifying? I took it to be that there was  
20 just like, the way it was posed by Ms. Geiger, there would  
21 be a change to certain numbers?

22 MS. GEIGER: Yes, Mr. Chairman. My  
23 concern is that, down the road away, someone might pick  
24 up this record and just start reading Mr. Gravel's and Mr.

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1 Pelletier's supplemental prefiled, and think that that was  
2 actually the High Elevation Mitigation Plan. They may not  
3 refer to the Settlement Agreement. So, I thought, to be  
4 consistent in the record, it would be appropriate to  
5 update the prefiled testimony. But, to accommodate  
6 Mr. Roth's concern, if the Committee prefers, rather than  
7 having Mr. Gravel run through the pages now, I could  
8 submit substitution pages for his prefiled testimony.

9 CHAIRMAN GETZ: I guess it's generally  
10 driven by an issue of how extensive the changes are.  
11 Because what I was trying to do, Mr. Roth, was get the  
12 information to the other parties as quickly as possible to  
13 assist in the cross-examination, --

14 MR. ROTH: I understand.

15 CHAIRMAN GETZ: -- which in this case is  
16 going to occur on Friday. So, --

17 MR. ROTH: I understand it. I guess my  
18 thought of it is, right now the testimony is what it is,  
19 and the record is what it is. And, if this case goes up  
20 on appeal, the question of "what was the testimony on any  
21 particular time?" is -- could be relevant. And, I would  
22 prefer that, instead of errata sheets being filed, that

23 simply a supplemental testimony be filed that clarifies  
24 what the actual deal is. And, for example, you know, it's  
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1 my understanding that, at various points in the past  
2 couple of weeks, since February 23rd, there have been a  
3 number of different proposals that have been back and  
4 forth, and the testimony that's now on file was one of  
5 those proposals, and that proposal was modified.

6 It's not a question of the testimony  
7 being wrong and correcting errors in it, it's just it was  
8 accurate as of a particular time and with a particular  
9 proposal. I think the record would be cleaner if they  
10 simply left the testimony from the 23rd as it is, and  
11 brought in a new statement of testimony that will stand on  
12 its own in the record.

13 CHAIRMAN GETZ: Well, I would propose  
14 that this is how we proceed. Now, this High Level  
15 Mitigation Settlement Agreement now is going to be an  
16 exhibit, I take it?

17 MS. GEIGER: Yes.

18 CHAIRMAN GETZ: So, this would be, the  
19 first thing, so that would be marked for identification as  
20 Petitioner Exhibit 47?

21 MR. PATCH: I think, actually, I don't  
22 know if this works, Mr. Chairman, or not.

23 MR. IACOPI NO: Forty-eight.

24 MR. PATCH: I think we wanted to  
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1 substitute -- I wish I had the number right here, but  
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2 there was another exhibit that we had for the Mitigate  
3 Plan, and we'd like to substitute this for that.

4 MR. MULHOLLAND: Mr. Chairman, I believe  
5 that's Appendix 40. I believe it's Petitioner's Binder 3  
6 potentially?

7 MR. PATCH: Yes.

8 MR. MULHOLLAND: So, it's number  
9 Appendix 40.

10 MR. PATCH: So, that would be  
11 Petitioner's 1.3, Appendix 40. But we can do it either  
12 way.

13 CHAIRMAN GETZ: Well, let me just see  
14 the document first.

15 MR. MULHOLLAND: Actually, it's not in  
16 three. It was submitted separately it looks like.

17 MR. IACOPI NO: Do you have the number on  
18 it, Evan?

19 MS. GEIGER: It's Volume 3.

20 MR. PATCH: It's Volume 3, Appendix 40,  
21 I believe.

22 MR. MULHOLLAND: Okay.

23 MR. IACOPI NO: I don't have an Appendix  
24 40 in my Volume 3.

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1 CHAIRMAN GETZ: Okay. Let's address it  
2 this way then. What's the next exhibit for the  
3 Petitioners?

4 MR. IACOPI NO: Forty-eight.

5 CHAIRMAN GETZ: Forty-eight. We'll mark  
6 for identification as Exhibit Number 48 the High Elevati on

7 Mitigation Settlement Agreement that was provided to the  
8 Committee and all the parties this morning.

9 MR. MULHOLLAND: Then, Mr. Chairman,  
10 we'd move to strike Appendix Number 40, Petitioner's  
11 Appendix 40, which is their old High Elevation Mitigation  
12 Plan.

13 CHAIRMAN GETZ: Well, I guess, for the  
14 same purposes of historical reference, I'll deny the  
15 motion to strike at this time. And, so, we'll keep that  
16 in the package. But, with respect to Mr. Roth's  
17 suggestion about how to deal with the supplemental  
18 testimony, let's keep the supplemental testimony as it is,  
19 and require the Petitioners to provide revised  
20 supplemental testimony, amended consistent with whatever  
21 changes need to be made to recognize the Settlement  
22 Agreement. Which I think, effectively, would be  
23 consistent with whatever was going to happen here orally  
24 today.

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1 MR. PATCH: Mr. Chairman, could I just  
2 clear up one thing on the record. Mr. Iacopino mentioned  
3 that he did not have Appendix 40. And, I believe the  
4 reason that he doesn't, those were submitted in the fall.  
5 There were three or four appendices that were submitted  
6 under separate cover in the fall, in October, as a  
7 follow-up to the public hearing.

8 CHAIRMAN GETZ: Yes.

9 MR. PATCH: And, so, maybe they didn't  
10 make it into some people's binders, but they were  
11 submitted. And, we'd be happy to provide additional

12 copies, if you the need them.

13 MR. IACOPI NO: I'm sure I probably have  
14 it, it's just not the binder.

15 CHAIRMAN GETZ: And, I have those.

16 MR. PATCH: Okay.

17 CHAIRMAN GETZ: So, it's just a question  
18 of making sure that everyone has put them in their  
19 original binders.

20 Okay. So, for the purposes of this  
21 panel at this time then, we're going to defer  
22 cross-examination, so the parties have some time to take a  
23 look at the Settlement Agreement. But what I want to do  
24 is, just for the members of the Committee, if there's any

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1 questions that you'd like to ask now, just in terms of  
2 clarification, not what would constitute the  
3 cross-examination of these witnesses, but are there any  
4 questions that come to mind that you would like clarified  
5 at the moment? Mr. Harrington.

6 MR. HARRINGTON: Just to make sure I'm  
7 reading this and not missing something.

8 BY MR. HARRINGTON:

9 Q. The transfer of this acreage to Fish & Game, I guess is  
10 going to come from the present landowner, through GRP  
11 to Fish & Game. And, there is nothing in here that  
12 talks about price, the cost of the land being  
13 transferred, is that correct?

14 A. (Lyons) There is nothing in here that talks about the  
15 price -- the cost of this mitigation package, but it is  
16 about \$2.4 million. And, mechanically, what we would

- 17 propose is that GRP would pay the landowners, and that  
18 they would convey the land directly to Fish & Game.  
19 Q. When you say the "2.4", does that include the amount in  
20 here that's being paid, the 200,000 and the 750,000  
21 that's being paid to Fish & Game --  
22 A. (Lyons) Yes.  
23 Q. -- for studies?  
24 A. (Lyons) Yes.

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- 1 Q. Everything?  
2 A. (Lyons) As well as the land purchases.  
3 Q. As well. Okay.  
4 A. (Lyons) We've already negotiated the options to  
5 purchase the land and the presses.  
6 CHAIRMAN GETZ: Dr. Kent, did you have a  
7 question?  
8 DR. KENT: Yes. One clarification  
9 question.  
10 BY DR. KENT:  
11 Q. This Agreement was negotiated between Noble, AMC, and  
12 Fish & Game. Is that the extent of the parties  
13 involved?  
14 A. (Lyons) Yes, sir. And, in addition to that, there were  
15 a number of parties in the room when we had the  
16 settlement discussions, and Public Counsel indicated  
17 that when -- if and when we were to reach an agreement  
18 with Fish & Game and AMC, that they would not contest  
19 high elevation mitigation issues. So, they declined to  
20 become a party of the Agreement, but I took that as  
21 their support of the process, if and when we were to

22 reach agreement with Fish & Game and AMC.

23 Q. Were there other State agencies in the discussions for  
24 settlements?

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1 A. (Lyons) No, there were not.

2 DR. KENT: Thank you.

3 WITNESS LYONS: Should I reference the  
4 DES?

5 MR. DECKER: Well, I just want to -- one  
6 clarification.

7 CHAIRMAN GETZ: Wait.

8 MR. DECKER: Just to add that, under --  
9 during the settlement negotiations, we did consult with  
10 DES, Craig Rennie, as well as Melissa Coppola with the New  
11 Hampshire Heritage Bureau, during these discussions, to  
12 keep them fully apprised of the negotiations and what was  
13 currently being discussed.

14 WITNESS LYONS: Thank you for that  
15 clarification. And, I might also add that one of the DES  
16 proposed conditions is that we enter into this Agreement.

17 DR. KENT: One more follow-up.

18 BY DR. KENT:

19 Q. DES and DRED, Department of Resources and Economic  
20 Development, have they in some way signed off  
21 officially on this agreement or decided not to, or have  
22 not really been given that choice at this point?

23 A. (Lyons) They did not formally sign the Agreement. What  
24 they indicated to us in the consultation was that they

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1 looked to the Fish & Game to take the lead on these  
2 high elevation issues.

3 DR. KENT: Thank you.

4 CHAIRMAN GETZ: Director Normandeau.

5 DIR. NORMANDEAU: Just one question.

6 BY DIR. NORMANDEAU:

7 Q. The land area around Mount Kelsey was how many acres?

8 A. (Lyons) 1,281 approximately.

9 Q. So, on your Exhibit B-2, it shows a hatched area that  
10 says "519"?

11 A. (Lyons) That is only the area on the Kennebec side of  
12 the property line.

13 Q. Okay.

14 A. (Lyons) If you look at Exhibit 5 or B-5 --

15 Q. All right. That's what I was asking. It's that whole  
16 --

17 A. (Lyons) That's correct. B-5 shows both the Kennebec  
18 side of the line and the Bayroot side of the line.

19 DIR. NORMANDEAU: Okay. That's all.

20 CHAIRMAN GETZ: Mr. Harrington.

21 MR. HARRINGTON: Yes.

22 BY MR. HARRINGTON:

23 Q. Just the land that gets -- eventually is going to get  
24 either transferred to Fish & Game or another

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1 appropriate agency, and there's some mention about "no  
2 motorized recreational activities" and so forth, and  
3 "Fish & Game staff shall be permitted to cross the  
4 adjoining land to get to the conservation land". Are

5 these lands going to be open to the public or is that  
6 just not known at this time?  
7 A. (Lyons) That's up to Fish & Game. It's really going to  
8 be land that's owned by the State of New Hampshire.  
9 The intent is that it would be preserved perpetually,  
10 you know, for conservation. But I would say that, you  
11 know, as the fee owner of the land, that would really  
12 be up to Fish & Game as to how to manage those  
13 properties.

14 MR. HARRINGTON: Okay. Thank you.

15 CHAIRMAN GETZ: Any other questions?

16 (No verbal response)

17 CHAIRMAN GETZ: Okay. Hearing nothing,  
18 then at this point we'll excuse this panel. And, we'll  
19 recall them sometime on Friday. And, let's move onto the  
20 LaFrance and Lobdell panel. Thank you, gentlemen.

21 WITNESS LYONS: Thank you.

22 (Whereupon Raymond Lobdell and Stephen  
23 LaFrance was duly sworn and cautioned by  
24 the Court Reporter.)

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[WITNESS PANEL: Lobdell | LaFrance]

1 CHAIRMAN GETZ: Ms. Geiger.

2 MS. GEIGER: Mr. Chairman, is it okay if  
3 I question the witnesses being seated?

4 CHAIRMAN GETZ: Please proceed.

5 MS. GEIGER: Thank you.

6 RAYMOND LOBDELL, SWORN

7 STEPHEN LaFRANCE, SWORN

8 DIRECT EXAMINATION

9 BY MS. GEIGER:

10 Q. Mr. LaFrance, could you please state your name for the  
11 record.

12 A. (LaFrance) Stephen LaFrance.

13 Q. And, could you pull the microphone right up close to  
14 you and speak into it. Thank you. Mr. LaFrance, by  
15 whom are you employed and in what capacity?

16 A. (LaFrance) I'm employed by Horizons Engineering. I'm  
17 the president of the company.

18 Q. And, what type of experience do you have?

19 A. (LaFrance) I have 25 years experience as a civil  
20 engineer, licensed in the States of New Hampshire,  
21 Maine, and Vermont.

22 Q. And, are you the same Stephen LaFrance who filed  
23 supplemental prefiled testimony on February 23rd, 2009,  
24 that's been marked for identification in this case as

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[WITNESS PANEL: Lobdell | LaFrance]

1 "Petitioner's Exhibit 10"?

2 A. (LaFrance) Yes.

3 CHAIRMAN GETZ: I think you're going to  
4 have to speak up more. It's not carrying.

5 BY THE WITNESS:

6 A. (LaFrance) Yes.

7 MS. GEIGER: And, for the Committee, Mr.  
8 LaFrance's supplemental prefiled is located in Volume 1a,  
9 under Tab (d).

10 BY MS. GEIGER:

11 Q. Mr. LaFrance, are you familiar with the prefiled  
12 testimony made by Philip Beaulieu that has been marked  
13 for identification in this case as "Petitioner's  
14 Exhibit 9"?

15 A. (LaFrance) Yes.

16 MS. GEIGER: And, again, for the  
17 Committee's reference, this testimony can be found in  
18 Volume 1, Tab (d).

19 BY MS. GEIGER:

20 Q. Mr. LaFrance, do you adopt Mr. Beaulieu's testimony as  
21 your own?

22 A. (LaFrance) Yes.

23 Q. And, do you have any corrections or updates to either  
24 the prefilled testimony or supplemental prefilled  
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[WITNESS PANEL: Lobdell |LaFrance]

1 testimony that have been marked as "Petitioner's  
2 Exhibit 9" and "10", respectively?

3 A. (LaFrance) No.

4 Q. And, with the corrections -- or, excuse me, with that  
5 information, your adoption of Mr. Beaulieu's prefilled,  
6 as well as your supplemental prefilled, if you were  
7 asked the same questions contained in those testimonies  
8 today under oath, would your answers be the same as  
9 those contained in Exhibits 9 and 10?

10 A. (LaFrance) Yes.

11 Q. Thank you. Mr. Lobdell, could you please state your  
12 name for the record.

13 A. (Lobdell) Raymond Lobdell.

14 Q. And, Mr. Lobdell, by whom are you employed and in what  
15 capacity?

16 A. (Lobdell) Lobdell Associates. I'm the president.

17 Q. And, what certifications do you hold?

18 A. (Lobdell) I'm a certified wetland scientist and  
19 certified soil scientist in the State of New Hampshire.

20 Q. And, how many years of experience did you have in those  
21 fields?

22 A. (Lobdell) Over 30 years.

23 Q. And, are you the same Raymond Lobdell who submitted  
24 prefiled testimony that's been marked for

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[WITNESS PANEL: Lobdell | LaFrance]

1 identification in this case as "Petitioner's Exhibit  
2 11"?

3 A. (Lobdell) Yes.

4 Q. And, supplemental prefiled testimony, filed by you,  
5 marked for identification as "Petitioner's Exhibit 12"?

6 A. (Lobdell) Yes.

7 MS. GEIGER: And, again, for the  
8 Committee references to Mr. Lobdell's prefiled and  
9 supplemental are respectively in Volume 1, Tab (e) and  
10 Volume 1a, Tab (e).

11 BY MS. GEIGER:

12 Q. Mr. Lobdell, do you have any corrections or updates to  
13 either your prefiled or supplemental prefiled  
14 testimony?

15 A. (Lobdell) Yes, I have some revisions to the  
16 supplemental testimony.

17 Q. Okay. Could you direct the Committee's attention to  
18 those pages.

19 A. (Lobdell) Yes. Page 4, Lines 8 through 10, just to  
20 clarify: The restoration component of the mitigation  
21 plan includes the removal of 17 existing culverts in  
22 perennial and seasonal streams. They will be replaced  
23 by box culverts. And, all five existing bridges on the  
24 Project area will be replaced. And, one large culvert

[WITNESS PANEL: Lobdell |LaFrance]

1 on West Branch Clear Stream will be replaced by a  
2 bridge.

3 Q. Do you have any other?

4 A. (Lobdell) The other revisions have to do with the  
5 Agreement, and acreage changes and that type of thing.

6 So, --

7 MS. GEIGER: Rather than making those  
8 changes, as we've agreed with Mr. Gravel and Pelletier,  
9 what we would propose to do is to submit revisions to the  
10 supplemental prefiled to highlight the new numbers that  
11 reflect the High Elevation Mitigation Settlement proposal.

12 CHAIRMAN GETZ: Okay. That's fine.

13 MS. GEIGER: Okay. Thank you.

14 BY MS. GEIGER:

15 Q. Now, Mr. LaFrance and Mr. Lobdell, with the information  
16 that you've just described, the updates by Mr. Lobdell,  
17 if you were asked the same questions in Petitioner's  
18 Exhibits 11 and 12 today under oath, would your answers  
19 be the same as those contained in Exhibit 12 and 11?

20 A. (Lobdell) Yes.

21 A. (LaFrance) Yes.

22 MS. GEIGER: And, these witnesses are  
23 available for cross-examination.

24 CHAIRMAN GETZ: Thank you. Ms. Linowes.

[WITNESS PANEL: Lobdell |LaFrance]

1 MS. LINOWES: Yes, Mr. Chairman. Thank  
2 you. Good afternoon.

4 BY MS. LINOWES:

5 Q. Mr. LaFrance, I have -- most of my questions are for  
6 you. There are some specific numbers that I'd like to  
7 go through. I know that we received some of these as  
8 part of discovery, and they're also part of your  
9 prefiled, but just to lay the groundwork how much  
10 impact we're talking about. The number of acres that  
11 actually will be cut for the road, I know that there is  
12 certain acreage that's been discussed, I think it's 79  
13 and a half acres of impact associated with the road and  
14 the turbine sites, is that correct?

15 A. (LaFrance) There were a number of calculations made for  
16 disturbance areas, clearing limits, above 2,700 feet,  
17 old-growth, total disturbance. With respect to the 70  
18 some odd acres that you're referring to, that was not  
19 the total disturbance area.

20 Q. Oh. The 79 acres -- I'm sorry, I didn't mean to talk  
21 over you.

22 A. (LaFrance) Go ahead. Go ahead.

23 Q. Seventy-nine acres of this, in that case you're talking  
24 about high elevation, as in above 2,700 feet?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (LaFrance) Correct.

2 Q. Okay. So, can you tell us how many acres, when all is  
3 said and done, the actual amount of acres associated  
4 with the road and the turbines, we'll get to the cut  
5 areas in a second, but the actual road and turbine  
6 sites?

7 A. (LaFrance) The total disturbance area for the project  
8 was 202 acres.

9 Q. Okay. Now, does that include the area that's going to  
10 comprise of the transmission line or distribution --  
11 the collection line that's going to go along side the  
12 road?

13 A. (LaFrance) When we talk about "disturbance area", it  
14 was related to upgrade of the existing roads, as well  
15 as construction of the new roads and the turbine sites.  
16 It did not include the transmission line.

17 Q. Okay. So, and I'll come back on the transmission line,  
18 let's talk about the roads for a second. The actual  
19 travel surface area, what is the width of that? I'm  
20 assuming now the construction is completed, the Project  
21 is operational, and what is left? And, that is not --  
22 not what it will be revegetated back to, what is the  
23 actual surface road that you're going to create?

24 A. (LaFrance) The road surfaces that we're going to create  
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[WITNESS PANEL: Lobdell | LaFrance]

1 vary, depending on where the roads are located. I  
2 can't tell you the acreage, but I can tell you the road  
3 widths.

4 Q. Okay. So, how about the roads leading to, not between  
5 the turbine sites, but leading to the turbine sites?

6 A. (LaFrance) Okay. The road surface from Route 16, to  
7 the lay-down site, which is about 6 miles in on the  
8 Project, that road surface will be 20 feet wide. From  
9 the lay-down area, up to the access roads on the  
10 ridgelines, that road surface will be 25 feet wide.  
11 And, the roads across the ridgelines, between the  
12 individual turbine sites, will be 34 feet wide.

13 Q. Okay. And, that's the travel space, the travel area.

14 Now, in addition to that, there is also slide slopes,  
15 drainage, infrastructure associated with the road  
16 itself, is that correct?

17 A. (LaFrance) That's correct.

18 Q. And, now, can you go through those three numbers now,  
19 adding in the additional width to accommodate drainage  
20 and others?

21 A. (LaFrance) The widths for the total disturbance vary  
22 quite a bit, depending on the terrain. If we have a  
23 situation where we have a cut into existing grade or  
24 fill, the footprint will be larger. The footprints

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[WITNESS PANEL: Lobdell |LaFrance]

1 tend to be larger on the steeper grades, because we  
2 have more cuts and fills that we need to accomplish. I  
3 think worst case scenario is probably in the range of  
4 150 foot wide disturbance area.

5 Q. Do you know the duration and length of road there will  
6 be that kind of width?

7 A. (LaFrance) Well, it varies. You know, that might be a  
8 maximum, and then you could go 100 feet down the road  
9 and it would come back in to 40 feet, and then back in,  
10 back out. It varies as the road follows the terrain,  
11 to the extent that we can.

12 Q. Now, you're also going to, separate from the road  
13 surface and all of the infrastructure, you had on the  
14 plans a clear -- it looked like the tree line, up to a  
15 certain tree line area. And, I wasn't sure, in looking  
16 at your plans, whether that was an actual  
17 representation of width or not. So, can you tell us  
18 how far beyond the road and all it's associated

- 19 infrastructure are you clearing the trees?
- 20 A. (LaFrance) We showed a clearing limit 10 feet beyond
- 21 the outside edge of proposed grade.
- 22 Q. On both sides?
- 23 A. (LaFrance) Yes.
- 24 Q. So, if we have 150 foot wide area for the entire road,  
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 it's 170 feet that we're talking about?
- 2 A. (LaFrance) Yes.
- 3 Q. So, -- Bear with me one second, I'm trying to read my
- 4 own handwriting. Now, there's been much talk about the
- 5 roads revegetating back to 12 feet width. Can you --
- 6 have you heard discussion of the fact that this is, at
- 7 high elevations in particular, the soils are thin and
- 8 it takes a long time for vegetation to grow back in
- 9 these areas in general?
- 10 A. (LaFrance) Yes.
- 11 Q. And, given that, as a civil engineer, how much -- or,
- 12 should I ask how would you characterize the vegetation
- 13 that you would allow to grow back on a road such as
- 14 what is being built. Trees?
- 15 A. (LaFrance) When you say "allowed to grow back in the
- 16 road", I guess it depends on whether you're talking
- 17 about the road surface or the fill slopes or the cut
- 18 slopes or what you're really referring to. Because I
- 19 think that the vegetation that you're talking about is
- 20 going to depend at least in part on where in that
- 21 disturbance area you're talking about.
- 22 Q. Well, let me ask a simpler question then, before we get
- 23 into that. What kind of vegetation can you anticipate

24 growing in the areas that have been disturbed to the  
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[WITNESS PANEL: Lobdell |LaFrance]

1 extent that we're talking about?

2 A. (LaFrance) Well, one of the things that we need to do  
3 is to, to the extent possible, minimize erosion during  
4 and after construction. So, the proposal is to put  
5 down a seed mix after the slopes have been shaped and  
6 stabilized that allow vegetation to start fairly  
7 quickly. And, the seed mix that we propose to use is a  
8 mixture of Aroostock rye, rye grass comes up very  
9 quickly, some fescues that will give us some bridging  
10 vegetation, in other words, a little bit more  
11 persistent than one year, the rye being an annual.  
12 And, then, over time, the natural vegetation will take  
13 over.

14 Q. The natural vegetation would take hold?

15 A. (LaFrance) Meaning Spruce-fir.

16 Q. So, I mean, I know that towns that have gravel roads  
17 aren't particularly enthusiastic about trees growing on  
18 their roads. I mean, what are we talking about here?  
19 What can grow and what will be permitted to grow on  
20 these roads, if anything can?

21 A. I, too, just saw the mitigation proposal this morning  
22 for the first time. I noticed in that proposal it says  
23 that the roads will be allowed to revegetate so that  
24 the travel surface will only be 12 feet wide. That's  
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[WITNESS PANEL: Lobdell |LaFrance]

1 essentially adequate for single-lane traffic, you know,

2 maybe a passing vehicle if one pulls over. I would  
3 assume that, based on that Mitigation Plan, that we  
4 will seed all but a 12-foot wide path. So, the gravel  
5 surface that will be used for access to these turbine  
6 sites will be 12 feet wide. The shoulders and the fill  
7 slopes will be seeded. So, initially, you'll have the  
8 rye, then you'll have the fescues, and then, over time,  
9 you'll have the balsam fir regeneration.

10 Q. I guess what I'm trying to understand, Mr. LaFrance, as  
11 a civil engineer, how much would you want plants with  
12 root systems taking hold on a road that is 34 feet  
13 wide?

14 A. (LaFrance) I'm okay with it. The only time it's going  
15 to be an issue is if, at some point in the future,  
16 these facilities are decommissioned, those trees will  
17 have to be cut so that equipment can be taken back out.  
18 In other words, we're building these roads to a certain  
19 width and geometry so that we can bring this equipment  
20 in. If the trees are allowed to grow back, and we only  
21 have a 12-foot wide roadway, and we have Spruce-fir  
22 growing right on the shoulders, they'll have to be cut  
23 again to get that equipment out of there. But, in  
24 terms of detrimental effect on the road, I don't see

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[WITNESS PANEL: Lobdell | LaFrance]

1 it. We regularly see old roads revert back over time  
2 and, if they're not maintained, they just keep growing  
3 in.

4 Q. Okay. Well, if I may, it's conceivable that turbine  
5 failures can result in a crane having to go up there as  
6 well throughout the 20 year, in advance of any

7 decommissioning time?  
8 A. (LaFrance) Yes.  
9 Q. Now, one of the questions I had as a data request, you  
10 don't have to bring the question out, but I did ask you  
11 to provide a listing of all the culverts and the number  
12 of culverts and the lengths on those culverts. And, I  
13 was directed to I think it was one of the appendices,  
14 that this was part of your terrain alteration permit  
15 that was submitted. And, I don't recall, I think that  
16 was Volume 5 maybe. But, in any event, I don't recall  
17 an actual table that had a breakdown of all the  
18 culverts and their lengths, as well as the water  
19 capacity that you anticipated going through those. Is  
20 there such a table?  
21 A. (LaFrance) I don't think there's a table that has all  
22 that information in one place. And, the information is  
23 all contained in the Application, but I don't think  
24 it's all in one single table.

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. So, can you tell us how many culverts?  
2 A. (LaFrance) Off the top of my head, I don't remember.  
3 Hundreds.  
4 Q. Hundreds? Okay. And, the length of the culvert  
5 extends beyond the surface area of the road, correct?  
6 A. (LaFrance) Yes.  
7 Q. And, does it extend, when you gave the 150-foot wide, I  
8 guess that was for the clearings, that when you took  
9 into consider -- no, right, that was the whole  
10 infrastructure around the road. So, the culverts are  
11 at least 150 feet wide in some cases, is that correct?

12 A. (LaFrance) I'm not sure. I'm not sure. That 150-foot  
13 wide dimension I gave you is probably the widest fill  
14 section we have anywhere on the Project. So, I don't  
15 want to give you the impression that that happens a  
16 lot. The culvert lengths are going to be dependent  
17 upon where they are in relation to the road. In other  
18 words, the culverts have to extend beyond the toes of  
19 the fills, otherwise they would be covered over. So,  
20 the culvert length is a direct function of where it is  
21 on the roadway and the roadway width at that point.  
22 So, the culvert widths are going to be at least as wide  
23 as the road surface, and probably a little more,  
24 depending on how much fill or cut we have in a  
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[WITNESS PANEL: Lobdell | LaFrance]

1 particular area.  
2 Q. And, they will extend outside of these side slopes of  
3 the road, correct?  
4 A. (LaFrance) They will extend to the toe of the side  
5 slope.  
6 Q. Okay. Now, the purpose of the culverts is to maintain  
7 a healthy unimpeded flow of water, natural water?  
8 A. (LaFrance) What we tried to do with this drainage  
9 design is to, to the extent practicable, in fact, more  
10 than we normally would, put enough culverts in so we  
11 don't have a concentration of drainage coming down the  
12 side of the road. So, what they do is they transfer  
13 water from the uphill side of the road to the downhill  
14 side of the road.  
15 Q. Okay. In that regard, is there a plan for maintenance  
16 on those culverts, to make sure that they do not get

17 blocked, and that plan being not just during the  
18 construction period or a couple of years into  
19 operation, but thereafter?

20 A. (LaFrance) We have not prepared a Operation and  
21 Maintenance Plan for the culverts on this project.

22 Q. Would you expect to have such a plan?

23 A. (LaFrance) It's unusual to do so, but it's not beyond  
24 the realm of possibility that --

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[WITNESS PANEL: Lobdel | LaFrance]

1 Q. So, let me make sure I understand though. In the  
2 course of 20 years, we have drainage ditches, we have  
3 culverts, we have lots of infrastructure in place in a  
4 pretty wild area otherwise. There will be an  
5 expectation that drainage ditches would get filled,  
6 waterways -- I mean culverts might getting blocked?

7 A. (LaFrance) Yes.

8 Q. And, if they did, what would the result be?

9 A. (LaFrance) It depends on the culvert that was blocked,  
10 how bad the blockage was, what kind of a storm event  
11 we're talking about. But, generally speaking, the  
12 system is designed to operate freely and openly and  
13 should be maintained. I wasn't suggesting that it  
14 shouldn't be. It would just be unusual for us, as a  
15 consultant, to prepare a plan for that to be done. But  
16 the system will have to be maintained.

17 Q. Okay. Those -- That road is designed with a 10-year  
18 storm in mind?

19 A. (LaFrance) That's correct.

20 Q. Are you aware that the Lempster road was designed, this  
21 is the Lempster Wind Project, was designed with a

22 25-year storm plan? Not initially, but it was  
23 upgraded?

24 A. (LaFrance) I was not aware of that, no.

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[WITNESS PANEL: Lobdell |LaFrance]

1 Q. Is there a reason why you picked a 10-year storm?

2 A. (LaFrance) We picked the 10-year storm because that is  
3 the requirement of the Department of Environmental  
4 Services for the Alteration of Terrain Permit process.

5 Q. So, given the amount of water that is up in that area,  
6 and the potential for rain in that area, you still  
7 think the ten years is sufficient?

8 A. (LaFrance) I think it's adequate.

9 Q. Is it true that, well, I'll ask you if you know this  
10 question, the zoning ordinances for many, many of the  
11 towns in the State of New Hampshire require for their  
12 own roads better than 10-year? 25 or 50-year?

13 A. (LaFrance) I've seen communities that have 25, 50, and  
14 I see some that it would even like 100. So, it is not  
15 unusual to have zoning ordinances with different storm  
16 events.

17 Q. And, they are located in areas that are far less rugged  
18 a terrain, these communities?

19 MS. GEIGER: Excuse me, Mr. Chairman.

20 Could Ms. Linowes please define which communities in New  
21 Hampshire she's referring to?

22 MS. LINOWES: Windham. Salem.

23 BY THE WITNESS:

24 A. (LaFrance) And, when you say "rugged elevation",

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1 terrain-wise?

2 BY MS. LINOWES:

3 Q. Correct.

4 A. (LaFrance) Yes.

5 Q. Mr. LaFrance, I had made a data request back, and you  
6 had answered to that.

7 MS. LINOWES: And, I don't -- are all  
8 the data requests in the record, Mike?

9 MR. IACOPI NO: Yes, they're all right  
10 here on the --

11 MS. LINOWES: Oh. I could read from  
12 this, if that's okay?

13 MR. IACOPI NO: Sure. But it might be  
14 helpful if you did so by referring to the exhibit number  
15 from the Exhibit List.

16 MS. LINOWES: I don't have that in front  
17 of me.

18 MR. IACOPI NO: I've got it. I have an  
19 extra one here.

20 MS. LINOWES: These would be my first  
21 set of data requests.

22 MR. IACOPI NO: I think that's 30. That  
23 would be the -- it's not 30. Here's a list for you. I'll  
24 find the data requests and tell you what they are.

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1 MS. LINOWES: What is --

2 MR. IACOPI NO: I'm sorry. It's  
3 Exhibit 31, the first set of data requests propounded on  
4 Lisa Linowes, on behalf of IWA.

5 MS. LINOWES: Thank you.

6 MR. IACOPI NO: Do you need the actual  
7 volume?  
8 MS. LINOWES: I don't need that. I have  
9 it.  
10 MR. IACOPI NO: Would it be helpful for  
11 the witness to have it?  
12 MS. LINOWES: Yes, probably.  
13 MR. IACOPI NO: Thank you.  
14 MS. LINOWES: Thank you, Mr. Iacopi no.  
15 BY MS. LINOWES:  
16 Q. This is Question 1-25. The question is "What slopes  
17 did you use for the roads designed at the project site?  
18 Got that? And, do you see that?  
19 A. (LaFrance) 1-25? No, I'm in the wrong place,  
20 apparently. Which data request was this?  
21 Q. It's IWAG 1-25.  
22 MR. IACOPI NO: I'm sorry, I've got it  
23 backwards.  
24 MR. PATCH: 22.1, I think. Petitioner  
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1 22.1.  
2 WITNESS LaFRANCE: I think I can answer  
3 the question.  
4 MS. LINOWES: Well, I'd like to read  
5 what the response was. Okay?  
6 WITNESS LaFRANCE: Okay.  
7 MR. IACOPI NO: I'm sorry. I provided  
8 you with the wrong exhibit. It's 22-1, Petitioner's  
9 exhibit.  
10 BY MS. LINOWES:

11 Q. The response you had was, or actually your predecessor,  
12 "The slopes of access roads to the project laydown yard  
13 are to be no greater than 9 percent, and the maximum  
14 slopes of access roads beyond the project laydown yard  
15 are to be no greater than 15 percent." Is that  
16 correct?

17 A. (LaFrance) Excuse me for a minute. Let me just find  
18 it. Okay. I'm with you. Sorry about that.

19 Q. Okay. No problem. So, you see the answer there?

20 A. (LaFrance) I do.

21 Q. Okay. Then, he goes on and says "As a general rule,  
22 Vestas requires approval of Vestas" -- I'm sorry.

23 "Vestas requires approval of Vestas" something "for  
24 slopes in excess of 8 percent, and Noble and Vestas

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[WITNESS PANEL: Lobdell | LaFrance]

1 have cooperated through the design process to develop a  
2 road network". Is that correct?

3 A. (LaFrance) Yes.

4 Q. Okay. Now, I have -- you supplied also for me, and  
5 this would be in response to my third set of data  
6 requests, you supplied the confidential agreement  
7 between Vestas and Noble, titled "Access Road  
8 Requirements During Delivery". Do you remember that  
9 document?

10 A. (LaFrance) Yes.

11 Q. Okay. And, it says "Access roads shall be 20 feet wide  
12 and shall have a minimum inside turning radius of no  
13 less than 140 feet." And "Access roads shall have a  
14 vertical grade no greater than 9 percent, provided  
15 however that a lower grade may be required depending on

16 drainage, roadway, structure, freezing of the roadway  
17 surface." Is that in line with what you had said?

18 A. (LaFrance) Yes.

19 Q. And, can you explain that?

20 A. (LaFrance) When we initially began work on the Project,  
21 we were provided with transport requirements from  
22 Vestas. And, in those transport requirements, they had  
23 a maximum grade of 9 percent, and they also had some  
24 fairly stringent requirements for horizontal and  
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1 vertical geometry. It became evident quite quickly  
2 that we weren't going to be able to get up to the  
3 turbine sites following those geometric requirements.  
4 So, we spent quite a bit of time working with Vestas  
5 and potential hauling companies to look at various  
6 equipment that could be used to move the turbine  
7 components. And, what we ended up coming up with  
8 really was a three-phase approach to this project.  
9 Where the first 6 miles of the access roads along  
10 Dummer Pond Road would be given horizontal and vertical  
11 geometry and road width to accommodate over-the-road  
12 transport vehicles, which will likely be 13-axle  
13 tractor-trailers.

14 Q. And, what is their length, including what they're  
15 hauling?

16 A. (LaFrance) About 145 feet, roughly. So, the road  
17 geometry requirements for that portion of the roadway  
18 are probably the most stringent. From that point on,  
19 from the lay-down area, the equipment will be taken off  
20 of these over-the-road transports, the 13-axle trailers

21 will turn around and head south. From that point on,  
22 we're going to transport the turbine components with a  
23 different piece of equipment. It's called a  
24 "Goldhofer". Essentially, what it is is a flatbed

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[WITNESS PANEL: Lobdell | LaFrance]

1 trailer, with 12 axles underneath it. They can be  
2 self-propelled or they can be moved by a prime mover or  
3 tractor. The geometric requirements for those roadways  
4 are quite a bit more liberal. And, that's the  
5 difference in the road geometry and the slopes between  
6 the initial 6 miles of road and the remainder of the  
7 roads for the project.

8 Q. Now, can you say that word again? Is it "goldhoff"?

9 A. (LaFrance) "Goldhofer".

10 Q. "Goldhofer".

11 A. (LaFrance) It's a brand.

12 Q. So, if there's a failure of one of the turbines  
13 sometime, then, in order to repair it, the Goldhofer  
14 has to be delivered to the site, the broken blade or  
15 whatever has to be delivered to the site, and then it  
16 goes through that process again?

17 A. (LaFrance) It obviously depends on the component. But,  
18 if one of the turbines required a blade replacement,  
19 then that new blade would have to be brought up to the  
20 turbine site with a Goldhofer unit or equivalent.

21 Q. And, is that typical for other wind facilities?

22 A. (LaFrance) I can't speak to that, ma'am.

23 Q. But this Goldhofer is capable of traveling on inclines  
24 of 15 percent?

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 A. (LaFrance) That was a question that we specifically  
2 posed to two different hauling companies. And, they  
3 said that was not going to be a problem.
- 4 Q. And, how many miles of 15 percent grade do you have on  
5 the Project, do you know?
- 6 A. (LaFrance) I don't know offhand.
- 7 Q. A lot?
- 8 A. (LaFrance) Not a lot of miles. We have a number of  
9 areas where we have a 15 percent grade, but the roadway  
10 varies similar to any other roadway in a mountainous  
11 reason. We have steep grades and then we have less  
12 steep grades. So, it varies.
- 13 Q. So, Mr. LaFrance, when you start getting into those  
14 steep slopes, what happens to the side slopes, as  
15 opposed to a road that is like Dummer Pond Road, which  
16 is relatively flat?
- 17 A. (LaFrance) We have a situation where the maximum grade  
18 that we can have on the roadway is 15 percent. So, if  
19 we're moving up a slope that is a 20 percent grade,  
20 then we have to create switchbacks or cuts and fills to  
21 accommodate the difference between the geometry that we  
22 can design the road to and what's currently existing.  
23 So, you get cuts and fills, which increase that  
24 footprint that you were asking about earlier.

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 Q. That's the consequence of going to the steeper slopes?
- 2 A. (LaFrance) Yes.
- 3 Q. Now, in terms of the road itself, I'm not going to ask

4 you what kind of weight it could stand, I assume it  
5 could -- the road you're constructing has a sufficient  
6 base to withstand the weight and wear of what's going  
7 to be built -- traveling on it?

8 A. (LaFrance) Yes.

9 Q. Okay. What roads here in the State of New Hampshire  
10 are comparable, at least in terms of the base, I  
11 understand it's not a paved road, but at least in terms  
12 of the base, what roads here in the State of New  
13 Hampshire are comparable to what you're building?

14 A. (LaFrance) In terms of the base? Most, with the  
15 exception of perhaps state primary and secondary  
16 highways, the base that we're proposing to use is  
17 pretty standard. It's going to consist of 6 inches of  
18 crushed gravel, 12 inches of bank-run gravel, and then  
19 structural fill underneath.

20 Q. And, how much --

21 A. (LaFrance) Structural fill being -- Well, what's ever  
22 required to get from the bottom of that road sub-base  
23 to original grade. So, it could vary from zero to tens  
24 of feet, if we're in a heavy fill section.

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. Okay. Well, actually, maybe this is a good time to  
2 show you some paragraphs, because I'm trying to  
3 visualize what you're saying. I'm going to hand you  
4 two photographs that we looked at yesterday, but  
5 promised to not discuss until you arrived.

6 A. (LaFrance) Thank you.

7 MR. IACOPI NO: Mr. Chairman, these are  
8 Exhibits IWA-X-23a and 23b.

GRP-DAY3.txt  
CHAIRMAN GETZ: Thank you.

9

MS. LINOWES: Thank you, Mr. Iacopi no.

10

11 BY MS. LINOWES:

12 Q. Now, this is a project site in Maine. And, I want to  
13 direct your attention to the winding road. And, you  
14 can see the turbine site in the background there or the  
15 turbine base?

16 A. (LaFrance) Yes.

17 Q. Is this something like what we might see in this  
18 Project site?

19 A. (LaFrance) Yes.

20 Q. And, how high, now, I could look at the trees, I have  
21 no idea how tall they are, but perhaps you could give  
22 us a sense of how high above the original grade this  
23 road might be?

24 A. (LaFrance) Well, it's hard to tell without somebody  
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[WITNESS PANEL: Lobdell |LaFrance]

1 standing out there to get perspective. But the curve  
2 that's at the bottom of the photograph, and it's kind  
3 of a guess, but I would say that's probably -- it's  
4 probably a 15-foot fill. I can't really tell how far  
5 it goes down, because the trees shade it to the right,  
6 but a 15 to 20 foot fill probably.

7 Q. Okay. And, the kind of curve that you're seeing there,  
8 is that representative of the kind of curve that you  
9 were talking about with the switchbacks?

10 A. (LaFrance) Yes.

11 Q. Do you think it will be -- Is that about as sharp as  
12 you can get with some of the equipment that --

13 A. (LaFrance) That looks about as sharp as you can get.

- 14 Q. Now, if I could -- if you could look at the next  
15 picture there. This one does have people standing in  
16 the picture, so perhaps you can get a sense of scale.
- 17 A. (LaFrance) Yes.
- 18 Q. Can you give us a -- do you have a sense of what that  
19 ledge cut looks like, the height of it?
- 20 A. (LaFrance) Thirty feet.
- 21 Q. Can we expect that kind of cut on this Project?
- 22 A. (LaFrance) I think so. There are going to be areas  
23 where you're going to see cuts similar to that. One of  
24 the things that came out of the process that we've been  
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 engaged in here is a discussion of a footprint and the  
2 amount of disturbance. And, we've shown one and a half  
3 to one slopes for the grading, but we've agreed,  
4 because I think it's good for the Applicant and it's  
5 good for the Project to utilize the ledge to minimize  
6 disturbance where we can. So, there will likely be cut  
7 faces like that in locations.
- 8 Q. Actually, before I go to my next question, how far  
9 would you say that that disturbance -- can you gauge,  
10 and I'm not good at it, so perhaps you're much better  
11 at it, to gauge perhaps the width of what we're looking  
12 at, of disturbance, at least from the base of that  
13 ledge cut, over to where the trees are?
- 14 A. (LaFrance) Well, you know, it's kind of a guess. But I  
15 think, if you assume that road base is 30 feet wide,  
16 that looks to be about half the distance from the base  
17 of that ledge cut. So, something on the order of  
18 60 feet.

19 CHAIRMAN GETZ: I'm sorry. The question  
20 was the width of the roadway?

21 MS. LINOWES: No, the amount of  
22 disturbance from the base to where the trees are, what it  
23 appeared to be.

24 CHAIRMAN GETZ: Thank you.

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[WITNESS PANEL: Lobdell | LaFrance]

1 MS. GEIGER: Excuse me, Mr. Chairman. I  
2 apologize. It's not clear to me which trees Ms. Linowes  
3 is referring to. Are they the trees on the upper  
4 left-hand side of the photograph or the trees on the  
5 right-hand side of the photograph?

6 MS. LINOWES: You're right. Thank you,  
7 Ms. Geiger. I'm talking about the trees that are on -- at  
8 the top of that hill on the right-hand side of the  
9 photograph. The span across the surface and then into the  
10 embankment on the right.

11 BY MS. LINOWES:

12 Q. Now, Mr. LaFrance, in your prefiled testimony, which I  
13 don't have it in front of me at the moment, but this is  
14 supplemental testimony on February 23rd. You're  
15 responding to Dr. Sanford's recommendation that a  
16 hydrogeological evaluation be done to understand what  
17 we're dealing with, what the potential is for blasting  
18 at the site, is that correct?

19 A. (LaFrance) Yes.

20 Q. And, you disagree with Dr. Sanford that such a  
21 pre-construction evaluation be done?

22 A. (LaFrance) Yes.

23 Q. Can you explain what Dr. Sanford may be looking to do,

24 if you know, and why you think it's inappropriate for  
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[WITNESS PANEL: Lobdell | LaFrance]

1 such an evaluation to be done?  
2 A. (LaFrance) Well, I think what he was alluding to was  
3 the request to prepare a study that determined where  
4 blasting would be required to construct this project,  
5 essentially. And, the reason that I disagreed with  
6 that approach was that, probably first and foremost,  
7 this site is very difficult to access. And, the only  
8 way that we can really understand what subsurface  
9 conditions are on this site, and we say "site", it's  
10 not a small site, it's a very linear site, is to go up  
11 there and actually advance soil borings. That's done  
12 with a piece of equipment that, at best, runs on  
13 tracks. And, this terrain is not suitable for that  
14 piece of equipment. So, we can't drive this piece of  
15 equipment up there, we have to fly it in. So, in order  
16 to really accomplish what was requested, in my mind,  
17 we'd have to fly this piece of equipment in, it's a  
18 soil boring rig. Set it down -- Well, clear it first.  
19 Set it down, set it up, drill a hole, and core into the  
20 bedrock and try to get a sense of how deep it is, how  
21 competent it is. And, even then, you only know what's  
22 going on in that one spot.

23 So, if you want to talk about the impact  
24 of this Project and understanding where blasting is  
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[WITNESS PANEL: Lobdell | LaFrance]

1 going to be required, you need to do a series of these  
2 holes. The more frequent they are, the better

3 understanding you get. But, generally speaking, if  
4 we're trying to profile a ledge face underground, we  
5 may do -- we would like to do borings maybe as tight as  
6 100 feet on center. In order to do that up here on  
7 this site, it's an exorbitant effort, time and money,  
8 to do that. And, then, ultimately, you have to look at  
9 the benefit. And, I just don't see where knowing where  
10 the ledge is today is of any great benefit beyond  
11 understanding the cost of the construction project.

12 Q. Is it possible, if you look at this kind of picture  
13 where it shows the ledge cut, 30 plus or so ledge cut,  
14 foot ledge cut, is it possible to at least understand  
15 at this time how much of that we will see at the  
16 Project site?

17 A. (LaFrance) We haven't gone through to actually try to  
18 determine where the ledge faces would occur. But, by  
19 looking at the grading plan, you can tell how much cut  
20 we have in a particular area. So, we know that, for a  
21 given area, we might drop the road 4, 6, 8, 10,  
22 15 feet, whatever the grading plan shows. What we  
23 don't know is whether it's 5 feet to bedrock or 10 feet  
24 to bedrock. So, we don't know now whether it might be

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[WITNESS PANEL: Lobdel | LaFrance]

1 a ledge face or a slope, but we know the final grade of  
2 the road, because we've already done the design.

3 Q. Now, one of the things that I found really surprising  
4 in your testimony, I'm going to read it to you, you  
5 said -- this is in regard to the drill rigs, bringing  
6 them in. You said "I believe" -- this is on Page 5 of  
7 8 of your February 23rd supplemental testimony, on Line

8 8. You say "I believe that effects on bedrock geology  
9 by blasting, that is fracturing, may enhance as many  
10 seeps, wetlands, and vernal pools as it harms."

11 Now, the first question before I ask you  
12 what you mean by that, are you stating that as a civil  
13 engineer or just -- is that a bit of a hydrogeologist  
14 perspective there?

15 A. (LaFrance) There could be a hydrogeology component of  
16 that, sure.

17 Q. So, do you know this? Or are you just -- It sounds  
18 like you're trying to suggest there's a  
19 environmental/public benefit if we blast the heck out  
20 of the geology there?

21 A. (LaFrance) That was not my suggestion. I think -- not  
22 "think", I know what I was suggesting, is that the  
23 testimony was something to the effect that there was  
24 concern that there would be a detrimental impact to  
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[WITNESS PANEL: Lobdell | LaFrance]

1 hydrology and vernal pools and wetlands as a result of  
2 the blasting. And, I am not a licensed geologist.  
3 But, as a civil engineer, I play around in the dirt a  
4 fair amount, including bedrock. And, my assumption was  
5 that the concern had to do with fracturing that rock  
6 and affecting the underground hydrology in some  
7 fashion. That fracturing of the bedrock can affect  
8 groundwater hydrology. But, if the water comes from  
9 one place, it goes somewhere else. So my point was  
10 that, in fracturing bedrock, you might actually create  
11 an avenue where you would raise the water table  
12 somewhere else in close proximity and create a wetland.

13 I wasn't suggesting that that was the  
14 purpose of the blasting and we were sure that was going  
15 to happen. But I think it's fair to say that you can  
16 create as many wetlands as you can destroy in a  
17 blasting exercise, if you're only looking at what  
18 you're doing to the bedrock.

19 Q. All right. Now, I want to talk -- or, just let me, in  
20 terms of the road profile, I did look at your road  
21 profile. And, the plan was so expansive it is very  
22 difficult to actually follow what's going on. But it  
23 does seem that there are areas that you are going to  
24 have 10 and 15 foot cuts or fills, and I'm just not

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[WITNESS PANEL: Lobdell | LaFrance]

1 sure. So, again, this is -- this picture with the  
2 ledge cut is easier for me to envision or that -- and  
3 just to reiterate, you expect to see that kind of  
4 construction at the Project site?

5 A. (LaFrance) We will see situations similar to that on  
6 this project site.

7 Q. Now, to the transmission line, this is not a 115 kV  
8 line, correct, or is it?

9 A. (LaFrance) It is not.

10 Q. And, so, I think we heard testimony the other day from  
11 Mr. Decker that the 115 kV has a 150 foot wide  
12 right-of-way. Do you know what the right-of-way -- I  
13 could be wrong, I could be misremembering that. But do  
14 you know what the right-of-way requirement is for the  
15 line that's going in there?

16 A. (LaFrance) I don't recall. I know we have it shown on  
17 the plan, but I honestly don't remember what the

- 18 right-of-way width is.
- 19 Q. I tried to measure by hand, but, again, I thought I saw  
20 80 feet or better?
- 21 A. (LaFrance) That sounds about right. I just don't want  
22 to commit, because I don't remember off the top of my  
23 head.
- 24 Q. And, does that follow, coincident with the road, the  
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 entire length of the road?
- 2 A. (LaFrance) Well, it comes down from the Fishbrook  
3 turbine string, about a mile cross-country, intersects  
4 Dummer Pond Road, and then comes out along Dummer Pond  
5 Road.
- 6 Q. How many miles of that do we have?
- 7 A. (LaFrance) Again, I'd have to be careful. Ten.
- 8 Q. Less than 33 then?
- 9 A. (LaFrance) Yes.
- 10 Q. And, I assume all the wetlands have been mapped for  
11 that?
- 12 A. (LaFrance) Yes.
- 13 Q. And, do you know how much -- what disturbance, you gave  
14 a number of 200 and something, I forget the number now,  
15 it's 202 acres total disturbance. That's after the  
16 Project's been operating, correct, and back together?
- 17 A. (LaFrance) Well, the 202 acres is the actual earth  
18 disturbance associated with the grading required to  
19 build the project.
- 20 Q. So, that's the total of disturbance?
- 21 A. (LaFrance) Yes.
- 22 Q. Okay. Now, when you add in the disturbance from -- or,

23 the cutting associated with the transmission line, how  
24 much is that?

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 A. (LaFrance) The total cutting is about 300 acres.  
2 Q. And, that's including the transmission line now?  
3 A. (LaFrance) Yes.  
4 Q. And, is there any heavy equipment that's going to be  
5 part of that transmission line?  
6 A. (LaFrance) Only to the extent necessary to set the  
7 poles.  
8 Q. And, how many poles are there, do you know?  
9 A. (LaFrance) I don't know offhand, I'm sorry.  
10 Q. Okay. Do you know, if the clearance is 80 feet, plus  
11 or minus, that means no trees growing anywhere within  
12 that area?  
13 A. (LaFrance) Well, we have to clear that right-of-way for  
14 the power line installation, and then that power line  
15 easement has to be maintained. I can't speak to what  
16 the maintenance requirement is. But there will be some  
17 limitation on the amount of -- the amount of trees that  
18 can come back underneath the wires. We can't have  
19 trees right under the wires.  
20 Q. Would that be governed by PSNH requirements or do you  
21 know?  
22 A. (LaFrance) I don't know.  
23 Q. Okay. But, just to reiterate, the road itself has some  
24 width associated with it. Then, it appeared on the

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 plans that there's a swath of trees, and then the  
2 transmission line, is that correct?
- 3 A. (LaFrance) Yes.
- 4 Q. Okay. So, do you know what the width of that swath is?
- 5 A. (LaFrance) That's going to vary as well, the power  
6 line. To the extent we could, we'd follow Dummer Pond  
7 Road, but that width varies.
- 8 Q. Okay. In any event, it would be a fairly developed  
9 looking area between the road and the transmission, is  
10 that correct, at least along Dummer Pond Road?
- 11 A. (LaFrance) Well, you will likely be able to see the  
12 power lines from Dummer Pond Road as you're going  
13 parallel.
- 14 Q. Do you know what the height of those would be?
- 15 A. (LaFrance) I don't remember.
- 16 Q. All right. That's the extent of my questions for you.  
17 And, I'd just like to ask Mr. Lobdell some questions,  
18 less so than -- Mr. Lobdell, did you submit the DES Ap  
19 -- the Wetland Application for the DES? Was it you who  
20 prepared it?
- 21 A. (Lobdell) No, I did not.
- 22 Q. But you provided the information about the wetlands?
- 23 A. (Lobdell) I did the -- I supervised the wetland mapping  
24 and map myself, and reviewed all of the delineations on  
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 Horizons' engineering plans, and then submitted two  
2 appendix to the Application, which was the vernal pool  
3 study and the Mitigation Area Plan.
- 4 Q. I assume you're familiar with DES rules --
- 5 A. (Lobdell) Yes.

6 Q. -- for applications, though you didn't submit it. Mr.  
7 Decker was asked, and answered in the affirmative the  
8 other day, that an Alternatives Analysis was submitted  
9 to the Army Corps, and they will make it available as  
10 part of the -- for the Army Corps permit. He's going  
11 to make it available to the parties and the Committee  
12 as part of this proceeding. Have you seen that  
13 Alternatives Analysis?

14 A. (Lobdell) Yes.

15 Q. Do you know what it consists of?

16 A. (Lobdell) Well, there are a number of components.

17 Q. I guess, in gross terms, what are the alternatives? Is  
18 there a "no build" is one of them?

19 A. (Lobdell) Yes, of course. But we looked at  
20 alternatives for different components. For example,  
21 where the switchyard was going to be located. I had  
22 looked at a number of sites that met the conditions of  
23 where the switchyard had to be located. We looked at a  
24 number of sites for the lay-down areas. I visited the  
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1 ridgelines with Noble representatives to site the  
2 turbines to minimize wetland impacts. We also looked  
3 at a number of sites for the mitigation area, and we  
4 analyzed -- the final analysis was for four different  
5 sites, --

6 Q. Okay.

7 A. (Lobdell) -- before picking the Phillips Brook site.  
8 So, there was a number of components to it.

9 Q. Okay. Do you know if any of the alternatives that were  
10 suggested about going from 67 turbines down to 33?

- 11 A. (Lobdell) I was not involved in the off-site type of  
12 alternatives.
- 13 Q. Okay. So, you don't know if that was -- if a full  
14 economic analysis was done to show that that was not  
15 appropriate?
- 16 A. (Lobdell) No.
- 17 Q. Okay. Now, as part of the rules under DES,  
18 requirements for the application, first question, I'm  
19 assuming that you agree this is a major impact under  
20 DES rules?
- 21 A. (Lobdell) Yes.
- 22 Q. The first rule, this would be Env-WT 302.4,  
23 Requirements for an Application Evaluation. The second  
24 item on this list, on DES rules, is "the alternative  
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- 1 proposed by the Application is the one with the least  
2 impact to wetlands and surface waters on site." Do you  
3 know how extensive an analysis was done to evaluate  
4 that?
- 5 A. (Lobdell) No. But, in the findings of DES, they found  
6 that the Application was sufficient to meet that  
7 standard.
- 8 Q. But you don't know -- did you have -- do you have any  
9 comment about the extent of support to that point that  
10 was offered by the Applicant to DES?
- 11 A. (Lobdell) Well, there are a number of avoidance and  
12 minimization efforts as part of this project. First of  
13 all, using the existing roads as much as possible to  
14 reduce impacts. As I said, citing the turbines out of  
15 the wetland areas, minimizing the new road impacts by

16 designing to the minimum standard, avoiding going  
17 through a wetland whenever possible, those types of  
18 things.

19 Q. And, then, I just have one -- a couple more questions  
20 related to plants, and then we'll be done. Number 7 on  
21 here says, as part of the application process, you have  
22 to evaluate "The impact on plants, fish and wildlife,  
23 including, but not limited to: Rare special concerned  
24 species; state and federally listed threatened and  
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1 endangered species." And, one of them is also  
2 "Exemplary natural communities identified by DRED-NHB;  
3 and vernal pools." Okay?

4 I would like to direct your attention to  
5 a letter. This is dated October 12th, 2007. It was  
6 written by Stantec, and sent to Mr. Decker, Pip Decker.  
7 And, this is in Appendix 15 of the -- one of the  
8 original volumes of the Application.

9 MR. IACOPI NO: You don't know what  
10 number that was?

11 MS. GEIGER: Volume 2.

12 MS. LINOWES: Volume 2. Sorry.

13 BY MS. LINOWES:

14 Q. You see that letter?

15 MR. IACOPI NO: It's Petitioner 1.2, your  
16 Honor.

17 BY MS. LINOWES:

18 Q. In the first paragraph, in the middle of it, it says  
19 "Surveys were initiated in mid to late June and again  
20 in late August to ensure proper identification of

21 flowering species." Do you see that?

22 A. (Lobdell) Yes.

23 Q. And, then, in the next paragraph, at the beginning, it

24 says "A formal rare plant survey was not completed,

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1 therefore, the following results should be used for  
2 preliminary planning purposes only." You see that? Is  
3 it your understanding that a rare plant survey was -- I  
4 mean, would that suggest that a rare plant survey was  
5 not done?

6 A. (Lobdell) It certainly was not done by myself. And, it  
7 was not required by the New Hampshire Wetlands Bureau  
8 as part of their application process, which is normally  
9 a contact of the natural inventory to get the existing  
10 information on any rare or exemplary species.

11 Q. Okay. And, then, I want to direct your attention to  
12 the next, this would be Appendix 16, and this would be  
13 a document from May 2008 entitled "Natural Community  
14 Characterization". This is in the same volume.

15 A. (Lobdell) Uh-huh.

16 Q. And, on Page 2, there's a section called "Results". It  
17 says "Stantec conducted field surveys between March  
18 24th and through March 27th. It is important to note  
19 that over 3.5 feet of snow was present throughout the  
20 project area during these field surveys. As such,  
21 observations of herbaceous vegetation or small shrubs  
22 was largely not possible." And, then, it says "This  
23 report uses results of prior field investigations to  
24 provide further information about each natural

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1 community and wildlife habitat within the project  
2 site."

3 So, would you suggest that that March  
4 survey wasn't particularly productive for evaluating  
5 natural communities?

6 A. (Lobdell) Well, certainly, for the -- as I said, the  
7 shrubs and herbaceous layers.

8 Q. It also says, this is the next, "Similarly, many  
9 species of wildlife that likely use these communities  
10 and habitats on a seasonal basis were not observable."

11 A. (Lobdell) On a seasonal basis, yes.

12 Q. Now, I want to -- the last thing I want to direct your  
13 attention to, this would be -- this would be Volume 6,  
14 I believe, no, I take that back. This was submitted as  
15 part of Mr. Decker's supplemental testimony. It would  
16 be Appendix or Section (f) of the supplemental  
17 testimony. I think it would be Volume 5.

18 MR. IACOPI NO: Petitioner 4 is the  
19 reference for the record. And, it is contained within  
20 Volume 2.1. Is this the Supplemental Testimony of Pip  
21 Decker and Mark Lyons?

22 MS. LINOWES: Yes. It is. There's a  
23 letter there from Stantec signed by Adam Gravel, sent to  
24 the U.S. Fish & Wildlife Service, dated September 16.

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1 MR. IACOPI NO: Which page was it, ma'am?

2 MS. LINOWES: A letter, it's a letter,  
3 September 16, Section (f).

4 MR. PATCH: I thought you said it was  
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5 the supplemental testimony?

6 CHAIRMAN GETZ: Okay. Off the record.

7 Let's see if we can just track down this exhibit.

8 (Off the record.)

9 CHAIRMAN GETZ: Okay. Well, let's go  
10 back on the record. And, if it's not extensive, let's see  
11 if we can pose the question. And, if necessary, you can  
12 show the document to the witness.

13 MS. LINOWES: Okay.

14 BY MS. LINOWES:

15 Q. So, we showed that the rare plant survey was not  
16 completed, that was the first letter I showed you.  
17 Then, the results, they went back out in March 2008,  
18 there was too much snow, they could not do an  
19 evaluation of the plants in that area.

20 MS. GEIGER: Excuse me, Mr. Chairman.  
21 This appears to be testimony. And, it seems to me it  
22 would be more helpful if we got a reference to the section  
23 of the letter first, so that the witnesses could look at  
24 it, and then Ms. Linowes could ask her question. But I

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1 would object to any testimony of this from Ms. Linowes.

2 CHAIRMAN GETZ: Okay. I guess I  
3 wouldn't characterize what she was doing as "testimony", I  
4 think she was trying to summarize the document. But let's  
5 give the witness the document that you want to ask him a  
6 question about.

7 MS. LINOWES: Okay.

8 CHAIRMAN GETZ: And, then, we'll  
9 describe that document. You said it's a letter from whom

10 to whom on what date?

11 MS. LINOWES: It was a September 16,  
12 2008 letter from Adam Gravel to Vern Lang of the U.S. Fish  
13 & Wildlife Service.

14 (Ms. Linowes handing document to Witness  
15 Lobdell.)

16 BY MS. LINOWES:

17 Q. Do you recognize that letter?

18 A. (Lobdell) No.

19 Q. In that -- that sentence that I underlined there, I  
20 believe it's the third paragraph, can you read that?

21 A. (Lobdell) "The purpose of the Natural Community  
22 Characterization conducted by Stantec were to document  
23 and map all high elevation Spruce-fir habitats within  
24 the Project site that could support Bicknell's Thrush  
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1 or American marten."

2 Q. So, based on the first two items that I had referenced,  
3 the letter from Stantec to Mr. Decker, stating the rare  
4 plant study was not completed, and the other time when  
5 there was snow, this seems to be suggesting their  
6 purpose of doing that survey was completely  
7 independent, it was not related to trying to identify  
8 rare plants?

9 A. (Lobdell) I'm not a wetland -- or, excuse me, I'm not a  
10 wildlife biologist, and I really don't feel qualified  
11 to determine whether an inventory they did was adequate  
12 or not.

13 Q. I guess I'm asking you that in reference to the fact  
14 that you said you're familiar with the DES requirements

- 15 for a Wetlands Permit?
- 16 A. (Lobdell) Yes. Which does not involve any studies or  
17 inventories.
- 18 Q. Okay. So, they -- that was not an obligation for them?  
19 There was no --
- 20 A. (Lobdell) Not that I'm aware of. Not under the normal  
21 application process.
- 22 Q. Okay. And, then, the last question I have for you,  
23 there is the discussion about "creation of vernal  
24 pools" as mitigation for the loss. Have you ever been
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- 1 involved with man-made vernal pool creation.
- 2 A. (Lobdell) I have been involved with wetland creation  
3 for a number of years. And, I'm currently involved in  
4 the construction of vernal pools at the Mount Carberry  
5 Landfill, in Berlin.
- 6 Q. But specifically vernal pools?
- 7 A. (Lobdell) Yes. I'm --
- 8 Q. Have you participated in the creation of vernal pools  
9 that you could see the result of having been  
10 successful?
- 11 A. (Lobdell) No.

12 MS. LINOWES: Okay. Thank you very  
13 much, Mr. Chairman.

14 CHAIRMAN GETZ: Okay. Thank you. Dr.  
15 Publicover, do you have questions for these witnesses?

16 DR. PUBLICOVER: Yes, ten minutes,  
17 potentially fifteen, but probably ten.

18 CHAIRMAN GETZ: Okay. Well, let me ask  
19 probably the most important question. Mr. Patnaude, how

20 are you doing?

21 MR. PATNAUDE: Ten minutes is okay.

22 CHAIRMAN GETZ: Okay. Let's go with  
23 your questions.

24 DR. PUBLICOVER: All right.

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1 BY DR. PUBLICOVER:

2 Q. A couple of questions for Mr. Lobdell. First, in the  
3 original Application, which is Petitioner 1.1, you  
4 don't have to look these up, Page 77, it indicates that  
5 the wetlands mitigation area will be "660 acres". In  
6 the supplemental appendices, which is Petitioner 2.2  
7 Appendix 43, which is the public notice for the U.S.  
8 Army Corps of Engineers permit, in the first paragraph  
9 it states that "A strategy for wetland compensatory  
10 wetlands mitigation is to place 860 acres at the  
11 headwaters of Phillips Brook into permanent  
12 protection." And, then, later in this same document,  
13 on Page 5, it says that "The proposed Phillips Brook  
14 mitigation area consists of approximately 672 acres."

15 And, then, finally, in your supplemental  
16 prefiled testimony, which is Petitioner's 12, the  
17 wetlands mitigation area is described as "620 acres",  
18 and that's the acreage that is referenced in the  
19 Mitigation Settlement Agreement. Can you clarify the  
20 discrepancies?

21 A. (Lobdell) The initial mapping was done basically by  
22 myself, by drawing some boundaries, hand-drawn  
23 boundaries, actually, on a USGS topo map, saying "this  
24 is the area we're designating and looking at for

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1 mitigation." Subsequent to that, there was some survey  
2 information that was involved at the time we were  
3 preparing a request for more information. There was  
4 some issues with regard to the ownership and where the  
5 boundaries were of landownership in the mitigation  
6 area. There was also negotiations between the  
7 landowners and Noble. So, those -- during that period  
8 the acreage number changed. And, to be honest with you  
9 right now, even the 620, without having a hard survey  
10 in hand, that number could vary slightly as well.

11 Q. Okay. Just one question. Do you know how it is that  
12 two separate numbers that vary by 100 acres ended up in  
13 the same document?

14 A. (Lobdell) No, I don't.

15 MR. ROACH: I guess you'd have to blame  
16 that on me.

17 BY DR. PUBLI COVER:

18 Q. Now, based on the Settlement Agreement that was  
19 described earlier by Mr. Lyons, the high elevation  
20 portion of the wetlands mitigation parcel will be  
21 transferred in fee to New Hampshire Fish & Game. Is it  
22 the intent of the portion of the wetlands mitigation  
23 parcel below 2,700 feet will be covered by a  
24 conservation easement or will the entire parcel be

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1 transferred in fee?

2 A. (Lobdell) Well, I just saw the agreement myself today.

- 3 But my understanding is that it will all be  
4 transferred.
- 5 Q. The entire. So, there will be no easement?
- 6 A. (Lobdell) Correct.
- 7 Q. That's right. Okay. Thank you. That's all for Mr.  
8 Lobdell. Mr. LaFrance, again, these questions are  
9 primarily to address a couple of issues which we raised  
10 in our testimony, and, hopefully, they can be resolved,  
11 you can resolve them to our satisfaction. First, in  
12 our original prefiled testimony, which is AMC  
13 Exhibit 1, you are familiar with the -- you're aware  
14 that we raised an issue regarding the increase in  
15 precipitation with elevation, and how that was  
16 accounted for in the culvert sizing calculations?
- 17 A. (LaFrance) Yes.
- 18 Q. Okay. And, you agree that average annual -- in the  
19 mountains of New Hampshire, average annual  
20 precipitation does increase with elevation?
- 21 A. (LaFrance) Yes.
- 22 Q. Does the intensity of the 10-year storm, by which you  
23 do your culvert calculations, also increase with  
24 elevation?

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- 1 A. (LaFrance) No one knows.
- 2 Q. No one knows. Okay. Now, we raised a question because  
3 the storm intensity maps, which were the last two pages  
4 of the -- I believe Appendix 3.B of the original  
5 Application, it's about 800 pages called the "Culvert  
6 Sizing Calculations", were a very sort of general  
7 statewide map that showed rainfall intensity zones, and

8 we raised a question as to whether this -- the numbers  
9 that were used for culvert sizing calculations  
10 adequately reflected the potential increase in run-off  
11 at high elevations. Can you address how, you know, can  
12 you describe how -- whether my concerns are misplaced  
13 or addressed?

14 A. (LaFrance) I hope so. I don't think your concerns are  
15 necessarily misplaced. I think the issue really is one  
16 of understanding the difference between annual rainfall  
17 and rainfall intensity, first and foremost, and then  
18 being able to identify and utilize data that actually  
19 exists. And, for the benefit of those who may not  
20 understand this black magic of drainage design, what we  
21 do is we look at a certain rainfall intensity. So,  
22 when Ms. Linowes was talking about a 10-year event or a  
23 25-year event. It has to do with a recurrence  
24 interval. For example, a "10-year event" means it's

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1 likely to happen once every 10-years, or has the  
2 10 percent chance of happening in any given year.

3 The State of New Hampshire and the  
4 engineering community typically relies on what used to  
5 be "SCS", now it's "NRCS", hydrology and hydraulic  
6 information to generate run-off estimates for drainage  
7 design. They have prepared maps that, for given  
8 rainfall events, give you an intensity of rain for a 24  
9 hour period, so many inches. We used a 10-year event,  
10 which is 3.9 inches of rain in a 24-hour period.

11 What Mr. Publi cover was asking was  
12 whether or not we took into account what's called

13 "orographic influence", the influence of elevation on  
14 rainfall. I have not been able to find any good  
15 reference that relates rainfall intensity to elevation.  
16 There certainly is some information out there. The  
17 Ollinger study, O-I-I-i-n-g-e-r, a UNH study, as well  
18 as the Prism Model, which was done at the University of  
19 Oregon, which puts together a pretty convincing  
20 argument that annual rainfall increases with elevation.  
21 And, I think we can sort of intuitively accept that.  
22 But no one has really done anything to look hard at  
23 rainfall intensity, which is really what we use for  
24 drainage design.

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1 We did contact a concern called "The  
2 Climate Source", they are the ones that act as the  
3 clearing house for the Prism Model data. I obtained  
4 from them what's called the "Mean Monthly Maximum  
5 Precipitation", which is their closest data to what  
6 we're really looking for here is maximum intensity.  
7 And, we looked at the data from 1960 to 1990, so a 30  
8 year period. One of problems that you'll see  
9 identified in the Prism Model, as well as the earlier  
10 papers, is there's a pretty minimal number of data  
11 points available for high elevation. The Ollinger  
12 study looked at the top of Mt. Washington, Mt.  
13 Mansfield, and Hubbard Brook. Those three data points,  
14 really, they're not very close to the Project site.  
15 They may or may not be representative of what's going  
16 on there.

17 The long and the short of it is, even

18 the Prism Model does predict an increase in rainfall  
19 intensity at the Project site. But they showed a  
20 maximum precipitation of 2.7 inches over a 24-hour  
21 period. So, even their model was significantly less,  
22 in terms of intensity, than what we used for our  
23 rainfall event.

24 So, that's probably a long way of  
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1 getting around to the fact that I feel pretty confident  
2 that numbers that we used are appropriate. I mean, I  
3 think your concerns were appropriate. I looked pretty  
4 heavily into the information available, and I wasn't  
5 really able to find anything that would suggest that  
6 what we did was improper.

7 Q. Okay. Another question related to that. How do you  
8 account, when you're doing culvert sizing, for the  
9 potential increase that may come from a rain-on-snow  
10 event?

11 A. (LaFrance) That's a question that we have addressed a  
12 number of times. We do an awful lot of work related to  
13 ski areas. And, generally, what we have found is that  
14 the design events, the events that occur when you're  
15 really stressing out your system, come as a result of  
16 rain events in the summertime. Those heavy August  
17 downbursts as a result of a thunder shower. You know,  
18 they're not really identified as a "10-year storm".  
19 They tend to be pretty localized. Our experience has  
20 been that the design that we prepare using the 10-year  
21 event, or sometimes the 25, tend to be adequate to  
22 address those intensity storms, and they generate more

23 run-off than rain-on-snow does. I think we have all  
24 seen those heavy rains in April, when there's a  
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1 snowpack up north, and you see the Merrimack come way  
2 up. We don't see the peak flows off the mountains at  
3 that time. And, I think it's primarily due to the fact  
4 that the snowpack actually soaks up a fair amount of  
5 that rain. So, the design events that we see are  
6 summertime.

7 Q. Okay. All right. In another area, I'd like to refer  
8 to Petitioner's -- okay, I believe it's Petitioner's --  
9 okay, there we go, Petitioner's 2.2, the supplement,  
10 Volume 6. Appendix 57 was a CD, which contain the  
11 current site -- engineering site plans for the Project.  
12 And, I don't know if there's a hard copy available of  
13 that, if you need it?

14 A. (LaFrance) There is a hard copy of the plans available.

15 Q. I don't know if you need to refer to that, maybe you  
16 can do it by memory. Did you prepare those plans?

17 A. (LaFrance) Yes. I didn't do it solely, but I worked on  
18 them, yes.

19 Q. Okay. And, you're aware that, in our supplemental  
20 prefiled testimony, that we had recommended the use of  
21 a rock sandwich road construction technique to be used  
22 in areas of high elevation, wetlands, and shallow  
23 subsurface flows to keep the funnel sort of in its  
24 natural pattern, rather than being diverted down a  
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1 ditch and into a culvert?  
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- 2 A. (LaFrance) Yes.
- 3 Q. Okay. And, you're aware that Dr. Gary Sanford, the  
4 witness for the Public Counsel, made that similar  
5 recommendation.
- 6 A. (LaFrance) Yes.
- 7 Q. All right. And, I see that, on sheet 143, which is the  
8 last sheet of your engineering plans, you have included  
9 a detail for that technique?
- 10 A. (LaFrance) Yes.
- 11 Q. Could you basically describe what -- for what this  
12 design technique is intended to do?
- 13 A. (LaFrance) Okay. We had intended on using rock fill,  
14 to the extent practicable, in these areas, because it's  
15 going to be readily available. But I think, you know,  
16 to the extent that this process makes this Application  
17 and this design better, you know, I'm all for it. And,  
18 I think Mr. Publicover's recommendation to identify the  
19 rock sandwich as a hydraulic connector is a good one.  
20 So, we propose to use what we're calling a "rock  
21 sandwich". The primary purpose being to connect  
22 up-gradient and down-gradient hydrology. If you've got  
23 a wetland and you're going through it with a roadway,  
24 you're potentially going to disconnect that hydrology.

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- 1 In most cases, we have a culvert shown there, that  
2 brings the water from up-gradient to down-gradient.  
3 But, if there's anything more you can do to enhance  
4 that, I think that's good for the Project. So, the  
5 intent of this rock sandwich is to create a minimum one  
6 foot thick shot rock, which is blasted ledge, a

7 sandwich that is on top of existing grade, but below  
8 the fill. That essentially allows run-off from the  
9 uphill side of the road via surface water, or  
10 groundwater, shallow groundwater, to travel underneath  
11 the roadway and reconnect with the down-gradient  
12 hydrology.

13 Q. Okay. Now, the note on this plan says "Rock sandwich  
14 cross drainage to be used in all areas where roads are  
15 constructed through wetlands, excluding stream channel  
16 crossings. Additional areas requiring a rock sandwich  
17 may be encountered once construction commences and will  
18 be determined by the field engineer." I assume these  
19 additional areas are areas where you may have a sort of  
20 shallow subsurface flow, but which do not qualify as --  
21 for delineation as legal wetlands?

22 A. (LaFrance) Yes. As an example, if we are going through  
23 an area that clearly has high groundwater, and we've  
24 stripped off the topsoil and we're into the water

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1 table, we may not have jurisdictional wetland on one  
2 side or the other, that, to me, would probably be an  
3 appropriate place to employ that rock fill.

4 Q. Okay. And, it says that "it will be determined by the  
5 field engineer". Is the field engineer an employee of  
6 Horizons or of GRP?

7 A. (LaFrance) I believe so.

8 Q. All right. The proposed, and I'm not sure what exhibit  
9 this is, this is the document that came in from the  
10 Department of Environmental Services on February 10th.  
11 And, it's their proposed finding of conditions for the

12 401 Water Quality Certificate, Wetlands Permit,  
13 Alteration of Terrain Permit. I know it's in the  
14 record, but I don't know if it has an exhibit number.

15 MR. IACOPI NO: Mr. Publicover, those are  
16 -- the 401 Water Quality Certificate is Petitioner's 39  
17 and the Wetlands Permit is Petitioner 40, and the  
18 Alteration of Terrain is 41.

19 DR. PUBLICOVER: Okay. Well, then this  
20 is probably 41. And, just for the record, since you both  
21 got it wrong, my name is pronounced "Publicover".

22 MR. IACOPI NO: I'm sorry.

23 DR. PUBLICOVER: Not "Poobli cover".

24 MR. IACOPI NO: I'm sorry.

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1 DR. PUBLICOVER: I tend to be sensitive  
2 about that.

3 BY DR. PUBLICOVER:

4 Q. This is the -- I believe it's 41, the "Alteration of  
5 Terrain Bureau Conditions". And, the last four  
6 conditions concerns -- it says "The permittee shall  
7 employ the services of an environmental monitor." And,  
8 it says "The monitor shall provide technical assistance  
9 and recommendations to the contractor on the  
10 appropriate Best Management Practices for Erosion and  
11 Sediment Control." Is it your understanding that this  
12 environmental monitor would have some input as to  
13 whether the -- whether this rock sandwich is to be used  
14 in places other than wetlands? Would that be a matter  
15 of discussion between the engineer and the monitor or  
16 --

17 A. (LaFrance) Well, I think they may very well be one in  
18 the same. You know, within our organization, we have  
19 licensed engineers, and we also have licensed certified  
20 erosion control specialists. I think that the intent  
21 of the condition is to have someone qualified on-site.  
22 Generally speaking, it's a consultant employed by the  
23 Applicant. We had intended to be on-site and provide  
24 that service, but I guess the details of that haven't  
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[WITNESS PANEL: Lobdell | LaFrance]

1 been worked out. But where these rock sandwiches may  
2 be employed beyond where they're shown on the plans  
3 would be a discussion between that individual and the  
4 site superintendent for the contractor.

5 Q. Was I correct in hearing you say that "the field  
6 engineering and the environmental monitor may be the  
7 same person"?

8 A. (LaFrance) Yes.

9 Q. Isn't that sort of the ultimate conflict of interest,  
10 if a person is monitoring his own work?

11 A. (LaFrance) Well, I think the intent is -- I mean, we  
12 see that condition frequently, and we provide that  
13 service. So, I think what we're really doing is we're  
14 not necessarily monitoring our work, we're monitoring  
15 the work of the contractor to ensure that the work's  
16 being done in substantial conformance with the plans  
17 and the specifications. And, if there are things that  
18 are discovered in the field that are different than  
19 what is shown on the plans, we have the opportunity to  
20 provide some expertise in how best to address those  
21 changes.

22 Q. All right. And, this note on the rock sandwich  
23 technique describing where it is to be used, under what  
24 condition it's used, do you think it's appropriate that  
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[WITNESS PANEL: Lobdell | LaFrance]

1 that be included as a condition of the DES permits? Is  
2 it something that you say will be done?

3 A. (LaFrance) Well, it's up to us to construct the plans  
4 -- construct the Project in conformance with the plans.  
5 So, it's already a tacet agreement that the permit is  
6 based on the approved plans. And, if that information  
7 is in the approved plans, then it has to be done.

8 DR. PUBLIC COVER: All right. Okay. No  
9 further questions.

10 CHAIRMAN GETZ: Okay. Just checking.  
11 Mr. Mulholland, do you have --

12 MR. MULHOLLAND: I have two brief  
13 questions for Mr. LaFrance.

14 BY MR. MULHOLLAND:

15 Q. Mr. LaFrance, you talked earlier about "revegetation",  
16 and you mentioned there's going to be some grass seed,  
17 Aroostock rye is the first one?

18 A. (LaFrance) The seed mix contains Aroostock rye.

19 Q. And, what else is in the seed mix?

20 A. (LaFrance) There is fescue in there. And, I don't  
21 remember offhand what the seed mix is exactly. It's on  
22 the last sheet, Sheet 143. But, primarily, the rye,  
23 for initial germination, and the fescue for the bridge.

24 Q. Is it possible to plant Spruce-fir on some of those  
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- 1 slopes to encourage the trees to come back down towards  
2 the road?
- 3 A. (LaFrance) We talked about doing that. And, I guess  
4 there were two ways to accomplish that. And, we had  
5 concerns with either one. The first one was to  
6 broadcast seed. And, when we spoke with some of the  
7 seed manufacturers about that, they sort of chuckled  
8 and said "you know, you're going to be followed close  
9 behind by about 10 million red squirrels." So, there  
10 is some concerns about birds and squirrels running off  
11 with the seed before they get a chance to germinate.  
12 It could certainly be done. Of course, the other thing  
13 is to plant seedlings. That can be pretty  
14 labor-intensive. We haven't gone any further with  
15 discussions on that, but there are some shortcomings to  
16 that. They will come back naturally, but it will take  
17 some time.
- 18 Q. Could there be maybe certain locations where it's  
19 particularly wide or particularly prone to erosion  
20 where that might be appropriate, seedlings?
- 21 A. (LaFrance) There may be, yes.

22 MR. MULHOLLAND: Okay. Thanks.

- 23 CHAIRMAN GETZ: Okay. And, I take it  
24 you have more than one or two questions, Mr. Roth, would  
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[WITNESS PANEL: Lobdell |LaFrance]

- 1 that be a fair assumption on my part?
- 2 MR. ROTH: Yes, that would be a fair  
3 characterizati on.
- 4 CHAIRMAN GETZ: So, let's take a 20

5 minute recess at this point.  
6 MR. ROTH: Thank you.  
7 (Whereupon a recess was taken at 3:22  
8 p.m. and the hearing reconvened at 3:50  
9 p.m.)  
10 CHAIRMAN GETZ: Okay. We're back on the  
11 record in Site Evaluation Committee Docket 2008-04. And,  
12 we now turn to Mr. Roth for cross-examination of the  
13 panel.

14 MR. ROTH: Thank you.

15 BY MR. ROTH:

16 Q. I thought I had organized these questions according to  
17 who's sitting there, but maybe you can each answer as  
18 you see fit, if you have the answer, if you know the  
19 answer. Now, I guess, in Mr. LaFrance's testimony,  
20 there was some suggestion that "further wetlands impact  
21 reductions were not feasible." Yet, I think that you  
22 would acknowledge that from, say, December at least,  
23 when we were looking at 4.8 [14.8?] acres of net  
24 wetland loss, we now, at this point, have 13.5 net --  
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[WITNESS PANEL: Lobdell | LaFrance]

1 acres of net wetland loss, is that correct?  
2 A. (LaFrance) We went from 14.8 to 13.5.  
3 Q. Correct. So, -- Okay. And, how did you do that in  
4 that period of time?  
5 A. (LaFrance) We relocated some utility poles in the  
6 proposed power line corridor. We had some pole  
7 impacts, and we also realigned the road, to the extent  
8 that we could, on Dixville, to get around some  
9 wetlands. Part of the problem we had was that we were

10 well into the design process, in terms of laying out  
11 the road, at the same time that we were finalizing the  
12 wetland delineation. So, as we brought in the wetland  
13 information, things -- wetlands landed where we didn't  
14 know we had wetlands before. So, we made some  
15 adjustments to the plan. And, I think the original  
16 Application had about 12.8 acres of impact. And, we  
17 started to go in the wrong direction. We started to  
18 add impact, which is not generally the direction you  
19 want to go in. So, we added some, and then we started  
20 working back to minimize.

21 Q. And, were those changes, the pole movement and the road  
22 realignments, made in response to specific comments by  
23 the Department of Environmental Services?

24 A. (LaFrance) They were made based on our own in-house  
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1 review, as well as comments from Craig Rennie, in his  
2 request for more information, which is a result of the  
3 Wetland Permit Application Review.

4 Q. When we -- In early January, I submitted testimony of  
5 Dr. Sanford, Dr. Mariani, and then at some point, I'm  
6 at a loss to remember the exact date, maybe it was  
7 early March, February sometime, February 24th, we met  
8 in my office. And, I believe the testimony -- and,  
9 during the meetings, we suggested additional  
10 opportunities for making changes. Did you make any of  
11 those changes?

12 A. (LaFrance) No, I wasn't in your office, but apparently  
13 you called one of my folks in my office, and there was  
14 a conference call. Is that the same meeting? You

15 spoke with Phil Beaulieu?

16 Q. Yes.

17 A. (LaFrance) We did not make any design changes as a  
18 result of that phone conversation.

19 Q. Okay. So, have you reviewed the testimonies of  
20 Dr. Sanford and Dr. Mariani?

21 A. (LaFrance) Yes, I have.

22 Q. And, so, from those testimonies, you can't conclude  
23 that there are any further changes you could make to  
24 the plan to do additional wetlands avoidance?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (LaFrance) I don't want to say that there aren't any  
2 changes we could make. My testimony is more to the  
3 extent that I don't agree that the proposed changes are  
4 appropriate for the Project. I mean, you can always  
5 make changes. It's just a matter of whether it's the  
6 right thing to do or not.

7 Q. Okay. So, you would concede then that there are other  
8 ways that could be done, you just don't agree that they  
9 ought to be done. Is that a fair statement?

10 A. (LaFrance) That's correct, yes.

11 Q. Okay. Now, in your testimony, you made a comment about  
12 blasting, and you indicated you didn't really know what  
13 the impact would be on nearby wetlands, and suggested  
14 that it might create more wetlands. And, we heard  
15 about that a little while ago earlier in the afternoon.  
16 And, you spoke that -- you said, well, you know, you're  
17 "not a geologist", but you said you "played around in  
18 the dirt quite a bit and you know things happen like  
19 that"?

20 A. (LaFrance) Yes.  
21 Q. Okay. Now, isn't it also true then that, if you don't  
22 know whether you're going to create new wetlands, isn't  
23 it also true that you don't know whether you're going  
24 to destroy any?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (LaFrance) Yes. The permit process is primarily  
2 related, first and foremost, to direct impacts. So,  
3 we've identified, to the square foot, what the direct  
4 impact will be. The ambiguity always comes in  
5 understanding secondary impacts.  
6 Q. Okay. But, I think, just so I'm clear on your  
7 testimony, without knowing where you're going to blast  
8 and what's -- and how much blasting you're going to do,  
9 you said "You could create more wetlands, you could  
10 destroy wetlands. You just don't know the answer until  
11 you actually go out and do the blasting."  
12 A. (LaFrance) Yes. I don't believe that the blasting  
13 that's proposed is going to have a significant impact  
14 on the wetlands. But there's really no way for me to  
15 quantify it.  
16 Q. Okay. And, then, there was some discussion in your  
17 testimony about doing a geotech survey. And, as I  
18 understand it correctly, what you're saying is, now we  
19 don't have roads in a lot of these places, and, if we  
20 had to do a geotech survey now, it would be  
21 exorbitantly expensive and difficult to get the  
22 equipment in and do the geotech survey. Is that a fair  
23 summary of what you were saying about it?  
24 A. (LaFrance) Yes.

[WITNESS PANEL: Lobdell |LaFrance]

- 1 Q. Okay. Now, is it possible to do a geotech survey with  
2 other techniques that didn't involve a drill rig?
- 3 A. (LaFrance) We can put together a scope. In other  
4 words, identify a geotechnical survey that can be  
5 accomplished without doing soil borings, such as  
6 handheld augers or geophysics, where you use  
7 ground-penetrating radar to determine depth to ledge.  
8 That would be -- That would qualify as a geotechnical  
9 survey, but the information that you would glean from  
10 that would be limited.
- 11 Q. And, seismic surveys, you could do seismic work as  
12 well?
- 13 A. (LaFrance) Yes.
- 14 Q. Okay.
- 15 A. (LaFrance) Yes.
- 16 Q. And, do you need a drill rig to do a ground-penetrating  
17 radar or seismic survey.
- 18 A. (LaFrance) No.
- 19 Q. Okay. Now, when -- your firm has designed this  
20 Project, correct?
- 21 A. (LaFrance) We have designed a portion of it, the  
22 roadways. And, we have worked with a team. So, we're  
23 part of a larger group, but, yes.
- 24 Q. Okay. And, do you expect to be the engineers on the  
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[WITNESS PANEL: Lobdell |LaFrance]

- 1 Project going forward to make sure --
- 2 A. (LaFrance) Yes.
- 3 Q. You do?

- 4 A. (LaFrance) Yes.
- 5 Q. Okay. As the engineer for the Project, don't you want  
6 to know, before you make a bid on the Project, how much  
7 blasting you're going to have to do? How much trucking  
8 you're going to have to do?
- 9 A. (LaFrance) Well, I think, just so that we're all clear  
10 on what our responsibilities will be as this Project  
11 moves to construction, we won't actually be the  
12 contractor. We won't be constructing the work. We  
13 won't be preparing a bid. Our responsibilities are  
14 limited to protecting the interests of the owner, and,  
15 as a branch to that, the state and the public, by  
16 making sure that the permit conditions are adhered to  
17 during construction. So, as far as preparing a bid and  
18 working on what it's going to cost to do the project,  
19 that's really something that the contractor will do.
- 20 Q. Okay. Do you think a contractor, looking at that set  
21 of plans, is going to want to know, "Gee, how much  
22 blasting do I have to do? How much trucking? How much  
23 rock crushing?" All those things, aren't those going  
24 to be important questions for a contractor trying to  
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 make a bid on this Project?
- 2 A. (LaFrance) Those are important questions for a  
3 contractor to answer to his or her satisfaction.
- 4 Q. And, if a contractor came in and simply made a bid on  
5 that job right now, as the plans are set up, subject to  
6 figuring it out, figuring it all out later, wouldn't it  
7 be loaded with contingencies that result in cost  
8 overruns?

9 A. (LaFrance) Not necessarily. You know, in a previous  
10 life I worked as a contractor. And, I know how I would  
11 approach this project. I don't know if the bidders  
12 will do this. But the alignment has been identified in  
13 the field, so you can walk the alignment and know where  
14 the roadways are going to be and where the turbine  
15 sites are located. And, you can get a pretty good  
16 sense, just by looking at the ground, what the material  
17 is, whether it's shallow depth to ledge or whether it's  
18 overburden. And, I think there certainly would be some  
19 sort of a contingency related to blasting. But my  
20 sense is that someone who understands earthwork would  
21 be able to put together a pretty good number for what's  
22 going to be involved in doing this project. So, I  
23 think -- I think the information is there. My concern  
24 with the geotechnical investigation wasn't so much in  
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[WITNESS PANEL: Lobdell | LaFrance]

1 determining the volume of ledge that might be out  
2 there. My concern was that I read that testimony as  
3 "tell us, Applicant, what the impact of this blasting  
4 is going to be on the wetlands." And, that's where I  
5 get a little nervous, because, even with a geotechnical  
6 investigation, you're way out on a limb. And, it's  
7 really dangerous to try to extrapolate secondary  
8 impacts to wetland due to blasting, even if you know  
9 exactly where the blasting is going to take place.  
10 Q. And, do you think it would be possible for a wetlands  
11 crew, a wetland scientist and a couple of individuals,  
12 to go out on the Project site and walk the road route  
13 and examine each of the wetlands impacts of the road,

14 and the same way the contractor would go through and  
15 make kind of rough guesses about the geotech of it,  
16 with sort of an eyeball glance, and come up with some  
17 at least preliminary indications about what kind of  
18 impacts, secondary impacts, might be experienced at the  
19 various places where the road crosses a wetland?

20 A. (LaFrance) Yes.

21 Q. And, then, from that, presumably, you could, the same  
22 people or others, could go back and say "well, this  
23 one's more complicated. Why don't we bring out a GPR  
24 and take a closer look at this one." Isn't that

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[WITNESS PANEL: Lobdell |LaFrance]

1 possible to do it that way?

2 A. (LaFrance) Yes. But, see, every time you do that, you  
3 just climb farther and farther out on the limb in terms  
4 of trying to guess what those impacts are going to be.  
5 I think, you know, you can throw a lot of money at  
6 these projects and do a lot of studies, but, at the end  
7 the day, after you've spent a lot of money and a lot  
8 time, which is money, you know, what's the reward?  
9 And, I guess that was where my objection was to doing  
10 some of these additional studies, is that I know how  
11 complicated they can be, they don't yield definitive  
12 answers. And, what they yield is this "well", "maybe",  
13 "if", "but", a lot of conditional stuff. And, that's  
14 just fodder for everyone to fight over later. I just  
15 didn't feel as though the return was there, because  
16 it's just really difficult to get our arms around some  
17 of these questions, no matter how much time we spend on  
18 the site.

19 Q. So, without having done any of the analysis, you're  
20 doing a back-of-the-envelope guess as to, you know, the  
21 anticipated "out on the limb" of it, and without even  
22 considering it on a preliminary basis, isn't that what  
23 you're saying?

24 A. (LaFrance) Well, what we're saying is that we know what  
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[WITNESS PANEL: Lobdell | LaFrance]

1 the direct impacts are going to be, because they're  
2 measurable. And, we could spend the next however  
3 amount of time you want to spend studying and arguing  
4 over secondary impacts. But, rather than do that,  
5 let's accept the fact that there are going to be  
6 secondary impacts to wetlands, to habitats, and let's  
7 put together a top-notch mitigation plan that addresses  
8 those impacts and goes well above and beyond the  
9 mitigation requirements that the State or the Corps  
10 have, and say "look, here's our mitigation package.  
11 You know, let's move on." And, that's really the  
12 approach that we've taken.

13 Q. But how do you know whether the mitigation package goes  
14 well and beyond anything, if you don't go out and do  
15 the analysis to determine what it is you're damaging?

16 A. (LaFrance) Well, I think we have done the analysis.  
17 And, I guess the difference that we have is a  
18 difference of opinion, and at what point that analysis  
19 is adequate. You know, I'm here because I have an  
20 opinion, and my opinion is that we're there. And, you  
21 may disagree, and that's okay.

22 Q. I thought your testimony said that "There are 600  
23 impacts. You can't possibly go and look at them all."

24 I thought that's what you testified in your  
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[WITNESS PANEL: Lobdell |LaFrance]

1 supplemental testimony?

2 A. (LaFrance) Well, that's -- I guess you can do anything,  
3 if you want to throw enough money at it. So, we could  
4 go and look at every single impact. But is that really  
5 appropriate in evaluating this Application? Many of  
6 the impacts are roadside ditches that -- and I just  
7 don't see the value in going and looking at a roadside  
8 ditch and trying to do a functions and values analysis  
9 on it.

10 Q. But Dr. Mariani and Dr. Sanford said that, if you take  
11 the roadside ditches and balance them with new ditches  
12 that you create, you basically exchange about half of  
13 your impacts for new wetlands creation on the ditches.  
14 So, just right there, you've eliminated about half of  
15 your impacts, isn't that right?

16 A. (LaFrance) He did say that. And, you know, our  
17 position is that we would rather not try to take credit  
18 for -- we're going to create ditches, probably more  
19 ditches than we're going to fill. But, rather than try  
20 to take credit for those as wetland creation, let's  
21 just assume, you know, they will some day revert back  
22 to wetland, and that's fine. But don't force the  
23 Applicant to go out and evaluate 20 miles of roadside  
24 ditches, and then monitor the new ones for one, two,

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[WITNESS PANEL: Lobdell |LaFrance]

1 three years, because I just don't see where there's a

2 high degree of function and value. And, again, I'm not  
3 a wetland specialist, that's this guy here. But, you  
4 know, I just don't see the value in making the  
5 Applicant do all this additional work.

6 Q. Okay.

7 A. (Lobdell) May I add something?

8 Q. Sure.

9 A. (Lobdell) My experience is that the value, the ditch  
10 value, functional value is so low, that generally the  
11 state regulators and the federal regulators would not  
12 even consider us crediting that as some form of  
13 mitigation. Storm water, any time a storm water  
14 structure, even though it may have wetland  
15 characteristics, is generally not considered for  
16 mitigation.

17 Q. Okay. So, wouldn't it be also true that it probably  
18 would be too unhappy about you not doing much to  
19 mitigate for one that you took out, correct? If they  
20 don't think building a ditch is much improvement, they  
21 probably wouldn't think of filling one as being all  
22 that much of an impact? I guess what I'm trying to say  
23 is, we're not talking about low value impacts here.

24 We're talking about the Project doing at least a

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[WITNESS PANEL: Lobdell | LaFrance]

1 preliminary assessment of the impacts that are there,  
2 and then deciding "is this a low value or high value?"  
3 And, not simply saying, "well, we don't really know  
4 what all is out here. Why don't we just go ahead and  
5 buy this piece of land on the side and call it a day."  
6 Because that's what your basic mitigation plan is.

7 You've made the road -- You've moved the road a little  
8 bit. And, now your saying "we're not going to worry  
9 about the details of the wetlands damage we're doing.  
10 We're just going to buy some land on the side and that  
11 should be it." That's your Mitigation Plan, isn't it?  
12 A. (Lobdell) Well, we did a functional assessment. And,  
13 based on that, we found that the values of the wetlands  
14 that are being impacted are primarily related to  
15 wildlife, recreation, and sediment, and sediment being  
16 the fact that the wetlands in the area have a sediment  
17 source within the watershed, which is commercial  
18 logging. And, we have mitigated to those functions by  
19 having a conservation easement, and now an ownership of  
20 an area that has strong wildlife and recreational  
21 value.  
22 Q. Well, I'm going to ask you some questions about that  
23 eventually. Okay. Now, there was some reference in  
24 the testimony to the "turbidity sampling plan". And,  
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[WITNESS PANEL: Lobdell | LaFrance]

1 it said you "proposed to prepare a turbidity sampling  
2 plan". And, I was curious what that means? What does  
3 it mean to "propose to prepare" one?  
4 A. (LaFrance) As part of the permit process, because we  
5 need to get an individual Corps permit, we're required  
6 by DES to get a 401 water quality certification. A big  
7 portion of that is demonstrating that the Project won't  
8 create degradation of water quality. And, when we  
9 looked at the pollutants of concern, the primary  
10 pollutant of concern with this Project is turbidity,  
11 sand, sediment coming off of either the site during

12 construction or post construction. So, we have been  
13 working with the Watershed Management Bureau on a  
14 turbidity monitoring plan, and that is a condition, the  
15 draft condition of the 401. The final details of that  
16 haven't yet been hammered out.

17 Q. Okay.

18 A. (LaFrance) But, essentially, what we'll be doing is  
19 monitoring turbidity downstream of the proposed  
20 Project, pre- and during construction and  
21 post-construction, to determine whether or not we have  
22 increases in turbidity as a result of the project.

23 Q. Okay. When do you expect that plan to be prepared?

24 A. (LaFrance) We haven't really talked about schedule.

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[WITNESS PANEL: Lobdell | LaFrance]

1 But it needs to be reviewed and approved and bought  
2 into prior to beginning construction. So, I would  
3 think that we would try to finalize that probably by  
4 mid May.

5 A. (Lobdell) I mean, we have some sampling points  
6 identified. The plan itself probably is more related  
7 to schedule and how it relates to the construction  
8 activities, rather than sampling points.

9 Q. Will that turbidity plan involve doing a survey or a  
10 study to determine a baseline point, that is the  
11 existing turbidity levels?

12 A. (LaFrance) Yes. And, that's part of the challenge is  
13 to do that.

14 Q. Okay. And, will that plan include requirements for  
15 continued monitoring and reporting on turbidity levels  
16 detected going forward?

- 17 A. (LaFrance) Through construction, yes.
- 18 Q. And beyond construction?
- 19 A. (LaFrance) That hasn't been decided. It may be
- 20 appropriate to have some turbidity monitoring for some
- 21 period after construction. But one would hope that
- 22 that would sunset at some point, once the site is
- 23 stable.
- 24 Q. And, until the culverts get clogged up again and the
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 ditches get clogged up again?
- 2 A. (LaFrance) Well, we talked about that earlier, and the
- 3 need to maintain the ditch lines. You know, one of the
- 4 things that we all need to remember is that Granite
- 5 Reliable Power isn't the only entity on-site. There's
- 6 a lot of logging that goes on up there. People
- 7 familiar with that activity know that there can be some
- 8 surface water quality impacts related to that activity
- 9 as well. And, we need to kind of separate the two.
- 10 Q. So, are you saying that the forestry companies that own
- 11 the land where the roads are are going to have the
- 12 responsibility to clean the ditches and the culverts?
- 13 A. (LaFrance) Well, I don't know the answer to that. The
- 14 road going into the project, Dummer Pond Road, will
- 15 continue to be used by the landowner. So that, you
- 16 know, we've got a network of roads that's 30 miles
- 17 long. So, some of the roads are related to the turbine
- 18 project, and only the turbine project, and some will
- 19 continue to be used for other activities.
- 20 Q. To your knowledge, does Granite Reliable Power have any
- 21 agreement worked out with the landowner with respect to

22 maintaining the culverts and the ditches?

23 A. (LaFrance) I have no knowledge of that.

24 Q. Okay. Now, your testimony assumed that work was going  
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1 to start in May of this year. Is that still true?

2 A. (LaFrance) That's our hope.

3 Q. What are you expecting to begin work on in May of this  
4 year?

5 A. (LaFrance) We would probably begin on Dummer Pond Road,  
6 which is the access point from Route 16.

7 Q. And, is that assuming that there's a certificate for  
8 this plan, for this project, or are you going to begin  
9 the work in May, regardless of whether there's a  
10 certificate?

11 A. (LaFrance) Oh, I think the assumption is that a  
12 certificate is in place.

13 Q. Okay. Are you aware that the Applicant has proposed a  
14 condition that would not allow the construction to  
15 begin until it has obtained financing for the whole  
16 Project?

17 A. (LaFrance) I was just made aware of that today.

18 Q. Okay. So, do you think that would change your start  
19 date if they didn't have financing?

20 A. (LaFrance) Well, I guess, if they make a commitment to  
21 not begin construction until financing is in place,  
22 then the schedule that we have proposed in our  
23 testimony is up for change.

24 Q. Okay. How long -- Well, how long do you think the work  
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1 that's involved in the roads, the road construction and  
2 the turbine pad construction, how long do you expect  
3 that to take?

4 A. (LaFrance) We've talked about two seasons, two  
5 construction seasons.

6 Q. So, if you started in May of '09, it would take May of  
7 '09 through the fall and then again in the spring --  
8 the summer of 2010?

9 A. (LaFrance) Well, we talked about, and, again, this is  
10 all nothing more than talk at this point, we need to  
11 bring in the contractor, because he's the one  
12 ultimately that's going to commit to the schedule. But  
13 we considered road and pad construction in '09, and  
14 then foundation and turbine assembly in 2010, with  
15 clean-up, so that the Project would be operational at  
16 the end of 2010.

17 Q. Okay. But the turbine and pad construction is separate  
18 than the road and pad preparation, I should say the  
19 turbine and foundation construction is separate from  
20 the road and turbine pad construction, correct?

21 A. (LaFrance) Yes, but they need to occur concurrently, in  
22 order to work this project through and complete it in  
23 two seasons. You can't just be linear. Things have to  
24 occur simultaneously.

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. Do you know how much the work for the road and pad  
2 construction will cost?

3 A. (LaFrance) I'm aware of some earlier proposals that  
4 were obtained by Granite Reliable Power for the site  
5 work portion of the Project.

6 Q. And, how much do you think it will cost?

7 A. (LaFrance) Well, I know what the proposal amounts were.

8 WITNESS LaFRANCE: Is that top-secret  
9 information?

10 MR. LYONS: That's confidential.

11 WITNESS LaFRANCE: I guess it's  
12 confidential.

13 CHAIRMAN GETZ: Well, certainly, it can  
14 be put on the record, I take it. It's just a question of  
15 whether it was put it on the record with -- we'd have to  
16 clear the room of people who aren't subject to the  
17 confidentiality agreement. Is that what you prefer to do  
18 at this point, Mr. Roth?

19 MR. ROTH: Well, it was really that one  
20 question. So, I don't know if we want to wait until the  
21 end and then chase everybody out.

22 CHAIRMAN GETZ: Let's do that at the  
23 end, and then we'll take care of it then.

24 BY MR. ROTH:

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. All right. Now, I noticed there was an interesting  
2 thing about your testimony that, Mr. LaFrance, that you  
3 stated that, "in your opinion, the Project would not  
4 have an unreasonably adverse impact on public health  
5 and safety." Was that your statement and your opinion?

6 A. (LaFrance) Yes.

7 Q. Okay. Yet, you didn't offer any opinion or statement  
8 that you felt that the Project would not have an  
9 unreasonably adverse impact on the natural environment,  
10 is that correct?

- 11 A. (LaFrance) That's correct.
- 12 Q. Okay. Now, there was -- Now, in your testimony, and I  
13 believe in Mr. -- I'm going to make a mess of his name,  
14 Mr. Beaulieu?
- 15 A. (LaFrance) "Beaulieu".
- 16 Q. "Beaulieu". It was said that "the Project design was  
17 to minimize impacts, minimize disturbances." Does that  
18 sound right?
- 19 A. (LaFrance) Yes.
- 20 Q. Okay. When you made that conclusion, did that include  
21 your not using pad locations for road passing? For  
22 example, if you had a -- is it possible to route a road  
23 through a turbine pad, an access road through a turbine  
24 pad in some instances?

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- 1 A. (LaFrance) I think it's possible. But it would be to  
2 the detriment of the project, in terms of construction.
- 3 Q. Okay. But, as far as -- it is possible and feasible to  
4 do that?
- 5 A. (LaFrance) Yes.
- 6 Q. Would that -- If they had done that, would you still be  
7 able to opine that it didn't have an adverse impact on  
8 public health and safety?
- 9 A. (LaFrance) Yes. It would require some changes to the  
10 construction schedule and techniques and staging and  
11 that sort of thing. But, with the appropriate changes,  
12 public health and safety could be protected.
- 13 Q. Okay. And, there was another -- there was at least one  
14 pad that had two entrances to it. Would it be possible  
15 then, to be consistent with public health and safety,

- 16 to eliminate one of those entrances to that pad site?
- 17 A. (LaFrance) Perhaps. We would have to look to make sure
- 18 that we could incorporate the appropriate geometry to
- 19 get the equipment in and out.
- 20 Q. Okay.
- 21 A. (LaFrance) But it's possible.
- 22 Q. Are there any turnouts on any of the locations that are
- 23 designed to allow vehicles to pass or two-way traffic?
- 24 A. (LaFrance) Not really. The access roads we propose to
- {SEC 2008-04} [Day 3 - REDACTED] {03-11-09}

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- 1 be 24 feet wide for that purpose, to be able to pass,
- 2 pass equipment, but there aren't any specific turnout
- 3 areas. There are some lay-down areas, staging areas,
- 4 but we haven't really designed much in the way of
- 5 turnouts.
- 6 Q. Okay. So, when you made -- when you opined that the
- 7 Project minimized its impact, it didn't include using
- 8 pad locations at, you know, running a road through a
- 9 turbine pad, right?
- 10 A. (LaFrance) Correct.
- 11 Q. And, it didn't include using only one entrance to a pad
- 12 site, correct?
- 13 A. (LaFrance) Correct.
- 14 Q. Okay. Now, I noticed in Mr. Beaulieu's testimony, I'm
- 15 sorry, it will look better on the transcript, believe
- 16 me, that he opined that "Granite Reliable had the
- 17 capability to construct and operate it". Has Horizons
- 18 done any work for Noble projects in New York, Texas,
- 19 and Michigan?
- 20 A. (LaFrance) No.

21 Q. And, do you know whether Mr. Beaulieu has personally  
22 visited any of those locations?

23 A. (LaFrance) Not that I know of.

24 Q. Okay. Have you personally visited any of those  
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1 locations in New York, Texas or Michigan?

2 A. (LaFrance) I have not.

3 Q. Okay. Have you or anybody at Horizons done anything to  
4 independently verify the claims that were made about  
5 the number of megawatts or the scope of the Company's  
6 investments in New York?

7 A. (LaFrance) No, sir.

8 Q. So, isn't it true that the statements in Mr. Beaulieu's  
9 testimony, with respect to those things, are without  
10 any basis or truth?

11 A. (LaFrance) Could you read his statement to me, and I'd  
12 feel a little more comfortable.

13 Q. I've got too many books.

14 A. (LaFrance) I may actually have it, if it helps you, if  
15 you can just tell me where it is.

16 Q. It's on Page 6, Line 23, and Page 7, Line 1 through 4.

17 And, the witness said "Noble has constructed over 188  
18 turbines across New York, totaling 292 megawatts of  
19 clean renewable energy. By the end of 2008, it's  
20 scheduled to have a total of 633 megawatts online in  
21 New York, making it New York's largest wind developer.  
22 In all, these projects represent a total investment of  
23 approximately 1.3 billion in the state's renewable  
24 energy infrastructure. In addition, Noble has projects

[WITNESS PANEL: Lobdell | LaFrance]

1 under construction in Texas and Michigan." So, do you  
2 have any basis to know the truth of any of those  
3 statements?

4 A. (LaFrance) That information was provided to us by  
5 Noble. We didn't independently verify it.

6 Q. Okay. So, you don't have any personal knowledge about  
7 that?

8 A. (LaFrance) I do not.

9 Q. Okay. That's all. Okay. There was I think a question  
10 about this, about "the project engineer making field  
11 determinations about conditions that were suitable to  
12 use I guess it was the rock sandwich"?

13 A. (LaFrance) Yes.

14 Q. And, what criteria is the project engineer going to use  
15 to make those determinations, to determine whether  
16 conditions were suitable?

17 A. (LaFrance) Well, as we talked about before the break,  
18 in my mind, the primary purpose of the rock sandwich is  
19 to protect groundwater and surface water hydrology,  
20 shallow groundwater hydrology. So, in those areas  
21 where we encounter shallow depths to groundwater,  
22 which, from a lay perspective, dig a hole, it fills  
23 with water. Those are the areas where we would be  
24 looking to use that rock sandwich, if we had a

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[WITNESS PANEL: Lobdell | LaFrance]

1 situation where that water was trying to flow from one  
2 side of the roadway to the other. I mean, if we're in  
3 a hollow, and we're going through with the roadway, and

- 4 we have groundwater, that may not be the appropriate  
5 place to use it. But, when we are trying to maintain  
6 that transmittance of shallow groundwater, that's where  
7 that rock sandwich would be appropriate.
- 8 Q. Okay. So, is it your testimony then that the only  
9 criteria that the project engineer would use to make  
10 that determination of suitability would be whether  
11 appropriate hydrologic conditions exist?
- 12 A. (LaFrance) We would use it where we have known wetland  
13 areas that we're crossing. But, as far as in the field  
14 determinations for additional locations where it would  
15 be used, my testimony is that it's primarily to be used  
16 to maintain hydrology, yes.
- 17 Q. Okay. Thank you. Now, Mr. Lobdell, you also testified  
18 that you didn't think that any further wetlands impact  
19 were possible. And, perhaps you can testify what you  
20 think of where that seven-tenths of an acre came from  
21 between 14.8 and 13.5?
- 22 A. (Lobdell) Yes. I know some of it came from moving  
23 poles out of the wetlands. And, most of the remainder  
24 came at the ridgelines, redesigning the road to reduce  
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 some of the larger impact areas.
- 2 Q. And, in your experience, do you think that it's  
3 possible to review the plans and find other places that  
4 the road could be realigned or a turbine pad could be  
5 realigned, in perhaps modest ways, to achieve  
6 additional wetlands avoidances?
- 7 A. (Lobdell) It's possible, sure.
- 8 Q. Okay. Now, there has been a fair amount in the

9 testimony about a project not having a net loss of  
10 wetlands functions on the site. You're familiar with  
11 that, right? And, I think it's clear that, on the  
12 site, the Project has a net loss of 13.5 acres of  
13 wetlands function, is that correct? Do you agree with  
14 that at this point?

15 A. (Lobdell) A net loss?

16 Q. Yes.

17 A. (Lobdell) No, because there's restoration involved with  
18 the improvements being made along Dummer Pond Road,  
19 with the installation of box culverts, to replace  
20 existing culverts, and the improvements related to  
21 putting bridges, new bridges in, and putting a large  
22 bridge in at Clear Stream. Those types of things are  
23 -- would reduce that net loss of acreage.

24 Q. Okay. So, the 13.5 acre figure isn't going to hold,  
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[WITNESS PANEL: Lobdell | LaFrance]

1 it's going to get smaller?

2 A. (Lobdell) Well, no, the 13.5 is the same. But, when  
3 you're talking about "no net loss", we're doing some  
4 restoration there, we're doing some restoration in the  
5 mitigation area itself.

6 Q. Okay. Setting aside the mitigation area for the  
7 moment, what if there are -- what will be the result on  
8 the 13.5 of additional efforts, restoration efforts  
9 made along Dummer Pond Road, what will be the acreage  
10 improvement that you will gain from that?

11 A. (Lobdell) We have -- The 13.5 includes the existing  
12 culvert crossings.

13 Q. Okay. So, you've already factored that in?

- 14 A. (Lobdell) Right.
- 15 Q. Okay. Now, isn't it true that the preservation of the
- 16 large acreages is no guarantee of functional
- 17 replacement?
- 18 A. (Lobdell) No, I don't agree with that. I think it is
- 19 immediately true, but I think, in the long term, that
- 20 we will have a no net loss of wetland functions and
- 21 values. A lot of the impacts are related to forested
- 22 wetlands. Forested wetlands, to create them, takes
- 23 possibly 40 years, so that they get their function
- 24 back. I think, by making these areas preserved and not
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[WITNESS PANEL: Lobdell | LaFrance]

- 1 having any logging on them, I think that these will be
- 2 the only -- potentially the only mature functioning
- 3 forested wetlands on that 80,000 acres. So, I think
- 4 it's -- it won't be immediate, but, over time, there
- 5 will be a no net loss of function.
- 6 Q. Do you know for certain that the construction of the
- 7 Project is going to cause a loss of 13.5 acres of
- 8 wetlands?
- 9 A. (Lobdell) Yes, I mean that's direct impact.
- 10 Q. Okay. Do you know for certain that, if not preserved
- 11 by the Project, the mitigation area, the wetlands in
- 12 there will, in fact, be lost?
- 13 A. (Lobdell) They may not be lost square footage-wise, but
- 14 they certainly will lose their function. Every time
- 15 they're logged, and even if it's done correctly, you're
- 16 cutting all of the trees. You're not -- In New
- 17 Hampshire, you can log a forested wetland, as long as
- 18 you don't leave an impact, you don't -- the skidder

19 doesn't rut up the area, so most of it is done in the  
20 winter, on frozen ground. So that -- But you lose all  
21 the vegetation. You lose, of those three components  
22 that make up a wetland, you lose that forested wetland.  
23 Q. Does DES consider forestry, properly conducted forestry  
24 activities to require a Wetlands Permit?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (Lobdell) Yes.  
2 Q. But do they consider cutting the vegetation to be a  
3 wetlands loss?  
4 A. (Lobdell) Not if you do it without, as I said,  
5 impacting the surface.  
6 Q. Right. Properly conducted forestry activities do not  
7 result in a wetlands impact, correct?  
8 A. (Lobdell) Right.  
9 Q. Okay. So, if, for example, the Project didn't put the  
10 wetlands mitigation area into easement, and GMO, I  
11 assume it's GMO or what's -- what's the name of the  
12 company that owns it?  
13 A. (Lobdell) I don't know.  
14 Q. The landowner goes in and violates all the wetlands  
15 rules and destroys the wetlands in that area, isn't it  
16 their responsibility to correct that and to mitigate  
17 for that, and to repair and replace that? Isn't it  
18 their responsibility?  
19 A. (Lobdell) If they're in violation of the state laws,  
20 yes, of course.  
21 Q. So, you can't really say for certain that the  
22 landowner, the logging company, is going to go in there  
23 and destroy those wetlands, can you?

24 A. (Lobdell) You can say, on the history of the site, that  
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1 they will be logged. And, that will reduce the  
2 functional value of the wetlands.

3 Q. But you can't say that, at the end of the next  
4 timbering cycle, you're going to have a piece of  
5 property with 13 and a half acres of wetlands lost, can  
6 you? You don't know that for certain?

7 A. (Lobdell) I'm not -- I don't understand your question,  
8 I guess.

9 Q. Well, you can't say that, by logging the wetlands  
10 parcel, the wetlands mitigation parcel, you can't say  
11 for certain that, at the end of the day, when it's all  
12 logged off, that you'll have 13 and a half acres of  
13 wetlands impacts there, can you?

14 A. (Lobdell) I think if they logged the entire, and we're  
15 talking about 620 acres, plus the additional, well, the  
16 total now is around 2,100 acres, between the high  
17 elevation and the wetlands, that, if those areas were  
18 logged, that you would lose I think far more functional  
19 value than the 13.5 acres.

20 Q. But only if it's done improperly, right?

21 A. (Lobdell) Not necessarily. I think just cutting, the  
22 act of removing the forested wetland, because, once you  
23 cut it, you've lost that forested wetland for 40 years.

24 Q. In the 13 and a half acres that are impacted on, that  
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[WITNESS PANEL: Lobdell | LaFrance]

1 are unbalanced in your site, do any of those include  
2 areas where you just cut the trees?

- 3 A. (Lobdell) Say it, I'm sorry.
- 4 Q. You've got 13 and a half acres of unaccounted for on  
5 the Project site, correct?
- 6 A. (Lobdell) "Unaccounted for"? No, I think we've  
7 accounted for it.
- 8 Q. Well, net loss.
- 9 A. (Lobdell) Square footage.
- 10 Q. Thirteen and a half acres of net loss, isn't that what  
11 you're talking about?
- 12 A. (Lobdell) No, I don't think there's 13 -- I mean, we're  
13 mitigating the functional value, which is what the  
14 State of New Hampshire, in their compensatory  
15 mitigation rules, you're replacing, mitigating the  
16 functional values, not the square footage of loss.
- 17 Q. Okay. Now, this question is for either one of you. Is  
18 there some time for -- that you can estimate for  
19 revegetation to occur of the disturbed areas in the  
20 Project site?
- 21 A. (Lobdell) You mean when you were talking about, for  
22 example, when Steve talked before about seeding down  
23 the fill slopes, how long that would take to --
- 24 Q. Correct.

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 A. (Lobdell) Well, I think, if you're trying to get it  
2 back to a mature forest, it's going to take 30 or 40  
3 years.
- 4 Q. Okay. And, does the fact that the soil has been  
5 disturbed factor into that?
- 6 A. (Lobdell) Well, of course, it depends upon how the site  
7 is left when it's planted. If there's topsoil, if

- 8           there's some subsoil. You know, the conditions which  
9           will allow the proposed vegetation to grow.
- 10   Q.    So, the fact that you've removed the soil and replaced  
11        it with crushed rock, is that going to affect the time  
12        frame for revegetating the areas along the road?
- 13   A.    (Lobdell) Certainly, if you just left it as crushed  
14        rock. But, I think, if it's topsoil to a certain  
15        depth.
- 16   Q.    Okay.
- 17   A.    (Lobdell) And seeded down and stabilized, I think that  
18        the trees can grow in that environment.
- 19   Q.    Is it possible that the construction activities and the  
20        existence of the road can bring in species of plants  
21        and animals, including insects, that are not presently  
22        found at the site?
- 23   A.    (Lobdell) It's possible.
- 24   Q.    And, is it possible that those species of plants and  
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[WITNESS PANEL: Lobdell |LaFrance]

- 1           animals, including insects, that are brought in could  
2           dominate the ecosystems on the site?
- 3   A.    (Lobdell) I can't answer the question on the insects.  
4        I've not found that that's the case with vegetation.  
5        You do get some invasive species that come in, and part  
6        of DES's conditions are to control invasive species,  
7        until the site gets stabilized and starts to mature.
- 8   Q.    And, how long is that period of time?
- 9   A.    (Lobdell) I can't remember what -- how it's stated in  
10        there.
- 11   Q.    Is that two years?
- 12   A.    (Lobdell) I'm sure it's at least three.

13 Q. You think it's three years. Has Horizons ever designed  
14 a wind farm before?

15 A. (LaFrance) No.

16 Q. Okay. Now, Mr. Lobdell, maybe you don't know the  
17 answer to this, but, in one of my data requests, I  
18 asked whether, in response to reading the rare plant  
19 survey, I asked about "Mountain Sweet cicely". Are you  
20 familiar with that?

21 A. (Lobdell) You're right. I don't have the answer to  
22 that question.

23 Q. Okay. Are you aware that Mountain Sweet cicely was  
24 identified somewhere in this area?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (Lobdell) No, I don't.

2 Q. Do you know what Mountain Sweet cicely is?

3 A. (Lobdell) No, I don't.

4 Q. Well, I will tell you that it was identified by the  
5 rare plant survey as, I guess, a rare plant, and  
6 perhaps it's an endangered or a threatened species of  
7 rare plant. And, I asked in a data request "where it  
8 was located and how it would be protected?" And, in PC  
9 3-1, I was told that it was located within the wetlands  
10 mitigation area. And, PC 3-1 is part of the record.  
11 Is any of this ringing a bell with you at this point?

12 A. (Lobdell) No, I assume that's information that Stantec  
13 developed, and I'm not familiar with it.

14 Q. Okay. Now, and, so, I'm trying to find out where the  
15 Mountain Sweet cicely is, because I've got different  
16 size parcels here, and I'm going to show you some maps?

17 CHAIRMAN GETZ: Well, is this something  
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18 this witness is going to be able to --

19 MR. ROTH: Well, I can at least get him  
20 to tell me where the -- I think I can get him to tell me  
21 where the mitigation area is, and then from there we can  
22 figure whether the Mountain Sweet cicely is in it.

23 BY MR. ROTH:

24 Q. All right. The first document I'm showing you is --  
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1 was provided to me in response to my Question Number  
2 4-24, which is a map showing the approximate location  
3 of the proposed wetland mitigation area?

4 A. (Lobdell) Yes.

5 Q. And, then, the second document I'm showing to you is  
6 Figure 1, from your Stewardship Plan, which I think  
7 also describes the proposed wetlands mitigation area.

8 A. (Lobdell) Right.

9 Q. And, then, the third document I have here is a map from  
10 the June 20th Stantec rare plant survey, which shows  
11 the survey boundaries for the rare plant, and  
12 presumably in which the Mountain Sweet cicely was  
13 found. Now, as you can see, from the two maps showing  
14 the wetlands mitigation area, we have very different  
15 configurations of the wetlands mitigation area. So, my  
16 first question is, can you tell me why we have two  
17 different pictures of the same thing?

18 A. (Lobdell) This was submitted with the original Wetland  
19 Application. This was the original boundaries that I  
20 stated earlier, these -- this was a boundary that I  
21 hand-drew on a USGS map and submitted with the Wetland  
22 Application. You're required, under the wetlands

23 rules, to submit a conceptual wetlands plan --  
24 conceptual mitigation plan, and this is what I  
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1 submitted.

2 This is what was developed in January,  
3 based on additional survey information, based on  
4 negotiations between the landowners and Granite  
5 Reliable Power.

6 MS. GEIGER: Mr. Lobdell, could you  
7 identify what you mean by "this"? What piece of paper are  
8 you holding?

9 WITNESS LOBDELL: Yes, I have a large --  
10 these boundaries here (indicating) --

11 CHAIRMAN GETZ: Well, again, I mean,  
12 we've had a couple of documents identified by Mr. Roth.  
13 And, what I took it was is one -- the first document you  
14 described is filed in the original prefiled testimony, and  
15 the second document described was -- I'm not sure when  
16 that was filed. Was that filed with the supplemental?

17 WITNESS LOBDELL: Yes. It was.

18 Correct.

19 BY MR. ROTH:

20 Q. So, the first one, the more regular shape, which is PC  
21 4-24, this was just your hand-drawn estimate of where  
22 you thought it was?

23 A. (Lobdell) Right.

24 Q. Okay.

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[WITNESS PANEL: Lobdell | LaFrance]

1  
2 contained in Petitioner Exhibit 21.4.

3 BY MR. ROTH:

4 Q. And, then, the second picture, which was a figure to  
5 your recent Stewardship Plan, that was part of your  
6 supplemental testimony, --

7 A. (Lobdell) Yes.

8 Q. -- is the revised one. How did we get to that rather  
9 unusual shape now?

10 A. (Lobdell) It has to do with the land ownership on this  
11 side.

12 Q. On which side? On the west?

13 A. (Lobdell) On the southern portion of the property.

14 Q. Okay.

15 A. (Lobdell) These represent the land ownership. The rest  
16 of this is already in conservation land, with either  
17 Nash -- mostly Nash Forest.

18 Q. Okay.

19 A. (Lobdell) And, then, this boundary was negotiated with  
20 the landowners.

21 Q. The eastern boundary?

22 A. (Lobdell) Yes.

23 Q. Okay.

24 A. (Lobdell) And, that's approximately a 200-foot buffer  
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[WITNESS PANEL: Lobdell | LaFrance]

1 along Hedgehog Brook.

2 Q. Okay. And, is there any way to overlay these two, so  
3 that we can see -- can you tell us, based on looking at  
4 the earlier image, 4-24, what was gained or lost in  
5 comparison of those two?

6 A. (Lobdell) Well, I can show you roughly. This area was  
7 gained [indicating], some more additional high  
8 elevation.

9 CHAIRMAN GETZ: I think you're going to  
10 have to -- rather than saying "this", you have to describe  
11 where on the exhibit.

12 BY THE WITNESS:

13 A. (Lobdell) The eastern -- The western portion, that  
14 abuts Nash Stream, was extended out, mainly because,  
15 after looking at the surveys, there was awareness that  
16 the landowner had additional land in that area, the  
17 boundary had changed. On the northeastern side, this  
18 boundary was changed and brought this way. So, I'm  
19 sorry, was brought to the southwest. The original was  
20 around 660 acres. This one came out to about  
21 620 acres.

22 BY MR. ROTH:

23 Q. Okay. And, the little thing that looks like a stunted  
24 version of Cape Cod coming off of that, was that just  
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[WITNESS PANEL: Lobdell | LaFrance]

1 what was left after you --

2 A. (Lobdell) No. This was my recommendation, because this  
3 is a critical component of it, it's where -- this is  
4 the headwater of Phillips Brook. We have Annis Brook,  
5 we have Hedgehog Brook, where they drain into Phillips  
6 Brook. And, so, this -- where these streams come  
7 together, and the frontage on Phillips Brook, was a  
8 critical, in my mind, a critical component of making  
9 this mitigation area have as much value as it does.

10 Q. Okay. So, that was an additional acquisition?

- 11 A. (Lobdell) No, it was always part of their ownership.  
12 Q. But, in terms of it not appearing -- does it appear --  
13 A. (Lobdell) Yes, it's on that. Yes.  
14 Q. It's included within this shape of Nebraska here?  
15 A. (Lobdell) Yes.  
16 Q. Okay. Now, looking at this image from the rare plant  
17 survey, which identifies the rare plant survey area,  
18 could you tell us whether what was included in the rare  
19 plant survey area remains included in the wetlands  
20 mitigation area, because I'm worry about the Mountain  
21 Sweet cicely?  
22 A. (Lobdell) Yes. Obviously, if it's in --

23 CHAIRMAN GETZ: Just take a second to  
24 see if you can make the comparison by eyeballing it.

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 WITNESS LOBDELL: Yes.  
2 BY THE WITNESS:  
3 A. Yes, I believe the two delineations up here of this  
4 location are within the area. This other one is not.  
5 So, these two are, and this one, on Mount Kelsey, is  
6 not.  
7 BY MR. ROTH:  
8 Q. Okay. Thank you. Now, Mr. Lobdell, when you initially  
9 considered that area, did you personally go out and  
10 examine the wetlands in that mitigation area?  
11 A. (Lobdell) Yes, I did.  
12 Q. And, in your Stewardship Report, I believe, you  
13 indicated a breakdown of the various kinds of wetlands.  
14 Do you have any information or can you tell us -- you  
15 indicated that there was "Palustrine forested, scrub

16 shrub, and emergent wetlands that predominate the area  
17 in the Bucksport muck soil".

18 A. (Lobdell) In Group 1, yes.

19 Q. And, do you have any -- can you tell us how much of  
20 each of those various categories there are in the  
21 wetlands mitigation area?

22 A. (Lobdell) I can give you an estimate. Approximately 30  
23 areas of the Bucksport, very poorly drained.

24 Q. Okay. And, that's in Group 1 or Group 2 or both of  
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[WITNESS PANEL: Lobdell | LaFrance]

1 them together?

2 A. (Lobdell) One. Group 1.

3 Q. Okay. And, in Group 2, you had "palustrine forested  
4 wetlands". And, how many acres of that?

5 A. (Lobdell) Approximately 100.

6 Q. Approximately 100, okay. And, from your survey and  
7 examination of that, were you able to determine how  
8 much of that had been impacted by previous forestry  
9 activities?

10 A. (Lobdell) No. We did not, it wasn't -- the wetlands  
11 were not delineated like on the Project, they did not  
12 require it. So, these were just the boundaries came  
13 off of the Soil Conservation Service, County Soil  
14 Survey for Coos County, as well as looking at the  
15 National Wetlands Inventory maps.

16 Q. So, when you say you "went out there and examined  
17 them", you didn't actually go out and do a complete  
18 survey?

19 A. (Lobdell) I did not delineate them. I looked -- I  
20 examined them. There's a difference.

21 Q. Okay. Let's talk about the 30 acres of the "Bucksport  
22 muck", I love the sound of that. When you looked at  
23 that 30 acres, did you walk around the --

24 A. (Lobdell) Yes.

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. -- entire 30 acres?

2 A. (Lobdell) I spot checked it from various different --  
3 from various directions.

4 Q. Okay. And, from your examination in doing that, you  
5 weren't able to determine whether there have been any  
6 previous impacts on that wetland from forestry  
7 activity?

8 A. (Lobdell) Well, there have certainly been impacts, I  
9 just can't quantify it.

10 Q. Okay. And, in terms of your non-quantification, do you  
11 have sort of a rough guess?

12 A. (Lobdell) No, I don't.

13 Q. Okay. But there were some impacts you felt?

14 A. (Lobdell) Uh-huh.

15 Q. Okay. Was that a large impact or a little?

16 A. (Lobdell) Again, it's over the years, you can see where  
17 it's been impacted. But, again, some of it -- and it  
18 varies from whether it was logged eight years ago, four  
19 years ago, twenty years ago.

20 Q. Okay. And, what about the Group 2? Did you walk that  
21 entire --

22 A. (Lobdell) I did not walk the boundaries of that as  
23 much. I walked through it. It's a very large area.  
24 It's mostly forested. And, much of that had been

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[WITNESS PANEL: Lobdell | LaFrance]

- 1           logged.
- 2    Q.    Okay. Did you observe, in your reconnoiter of those
- 3           parcels, of those areas, opportunities where the
- 4           wetland could be -- where restoration activities might
- 5           be beneficial?
- 6    A.    (Lobdell) I did identify one important one. And, if I
- 7           can show you on this. This is Hedgehog Brook, and this
- 8           is Annis Brook. There's a logging road that comes into
- 9           the site here (indicating). And, there's a crossing of
- 10          Annis Brook. And, there's a 5-foot washed out culvert
- 11          vertical there, as part of the logging, original
- 12          logging job. So, we're proposing to take that 5-foot
- 13          culvert out and restore the stream in that section.
- 14   Q.    Okay. And, when you did your 13.5 acre function
- 15          analysis, was that work included in there already?
- 16   A.    (Lobdell) It's in -- It's in my supplemental, in terms
- 17          of part of the restoration plan.
- 18   Q.    Okay. Are there any other opportunities that you
- 19          observed in those areas for wetland restoration?
- 20   A.    (Lobdell) Not that it was easily identified.
- 21   Q.    Do you believe that a more thorough analysis could be
- 22          done to identify for other opportunities to conduct
- 23          wetlands restoration work in there?
- 24   A.    (Lobdell) It's possible. But, as I said before, I
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[WITNESS PANEL: Lobdell | LaFrance]

- 1           think we're so far exceeding the compensatory
- 2           mitigation requirements at this point that --
- 3    Q.    I didn't ask you whether you thought you were already
- 4           there. I asked you whether there were opportunities to

- 5 do it?
- 6 A. (Lobdell) There may be opportunities.
- 7 Q. Okay. Thank you. All right. Now, I'd like to get to
- 8 the charts, the plans. I don't know if you want to be
- 9 the --
- 10 A. (LaFrance) I can be the plan holder, if you'd like.
- 11 Sure.
- 12 Q. Okay. Start with Sheet Number 71. Now, sort of in the
- 13 middle of that page, there's a large rectangular area.
- 14 What is that? Mr. LaFrance, do you know what that is?
- 15 A. (Lobdell) I believe this is the Dixville lay-down area.
- 16 Q. Okay. So, that's the lay-down area?
- 17 A. (LaFrance) Yes.
- 18 Q. And, how big is that?
- 19 A. (LaFrance) Well, the easiest way to relate to this is
- 20 this is a half scale plan, so the scale is a little bit
- 21 off. But one inch is about 57 feet. I know that's
- 22 kind of mongrel. So, if you took this thing and said
- 23 it's 3 inches by 2 inches, there's 180 feet by
- 24 100 feet. So, that's three-quarters of an acre.

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[WITNESS PANEL: Lobdell |LaFrance]

- 1 Q. Okay. And, are there others of those things, those
- 2 areas?
- 3 A. (LaFrance) Yes.
- 4 Q. In fact, is there another one that's sort of segmented
- 5 and continued along out off the plan picture?
- 6 A. (LaFrance) Yes.
- 7 Q. And, that little pinch-off between them, why does that
- 8 happen?
- 9 A. (LaFrance) We've got a wetland there, a jurisdictional

10 wetland, that's what this shade represents. So, we've  
11 got wetland here, we've got wetland here, so we wanted  
12 to minimize the impact.

13 Q. Uh-huh.

14 A. (LaFrance) And, so, that's why it's pinched off.

15 Q. Okay. And, what's going to become of that lay-down  
16 area when you're finished with it?

17 A. (LaFrance) They get revegetated.

18 Q. Okay. And, they will be revegetated with the usual  
19 highway stuff that you were talking about?

20 A. (LaFrance) Well, it will initially get seeded with that  
21 mix that we talked about earlier. But there's also a  
22 planting plan for those areas, where it gets a little  
23 bit additional treatment over and above some of the  
24 other disturbance areas.

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. Okay. Now, I noticed on some of those charts, there  
2 were depictions of trees being planted in areas. And,  
3 I don't see any of them planted there. Does that mean  
4 that there's no plan to plant trees there?

5 A. (LaFrance) Frankly, I don't recall. Let me check and  
6 see what we had. If you look on that plan, it says  
7 "See Sheet 132." So, I think this is a good time to  
8 see Sheet 132. This is the same scale, but just a  
9 different view. So, it shows the area where we went  
10 around this wetland, and here's the remainder of the  
11 lay-down area.

12 Q. Okay. So, that increases the size of it by more than  
13 double, is that fair to say?

14 A. (LaFrance) Yes. Yes.

15 Q. And, I don't see any trees planted on that one either.

16 Ah, there it is.

17 A. (LaFrance) We're getting to it.

18 Q. Okay. Beautiful.

19 A. (LaFrance) Probably could have pulled this one out.

20 That's the restoration plan for that area.

21 Q. Okay. And, is there some reason why there isn't any

22 more thick tree cover or are those tree depictions

23 intended simply to be symbolic?

24 A. (LaFrance) No, they're really intended to show the

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[WITNESS PANEL: Lobdell | LaFrance]

1 spacing.

2 Q. Okay. And, what's that look like now? If you were to

3 go up there, aside from the snow, what kind of level of

4 forestation would you find? Would that be thickly

5 forested?

6 A. (Lobdell) I've walked it twice. And, it's been logged

7 maybe 10 or 20 years ago. It's a variation of some

8 open areas and some places where the trees were left

9 because they were too small. There's some ledge

10 outcroppings.

11 Q. So, do you -- is it your opinion that that

12 reforestation plan is consistent with the way it looks

13 now?

14 A. (Lobdell) Well, it wouldn't be evenly spaced like this.

15 This is an engineer's forest. It would be more natural

16 when it's planted out. But I think the concept here is

17 getting the density of trees that will be planted.

18 Q. I've been to Logan Airport. I'm scared of what an

19 engineer's forest would actually look like.

- 20 A. (LaFrance) It's so efficient though.
- 21 Q. I'd like to see Sheet Number 102. Now, those are two
- 22 turbine locations. Can you tell the Committee where
- 23 they are?
- 24 A. (LaFrance) These round areas are the turbine locations.
- {SEC 2008-04} [Day 3 - REDACTED] {03-11-09}

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 Q. And, what part of the Project site are they located at?
- 2 A. (LaFrance) Probably the easiest thing to do is to go to
- 3 yet another sheet. There's an overall key that shows
- 4 the sheet as it relates to the overall project. Part
- 5 of the problem with this is the scale of this project
- 6 is so big that you have to refer to a lot of different
- 7 sheets.
- 8 Q. Can you just say where they are without pinpointing
- 9 them?
- 10 A. (LaFrance) Well, I think it's just helpful to point.
- 11 So, it's right here, which is kind of between Owl head
- 12 and Mount Kelsey. So, it's coming off of Dummer Pond
- 13 Road, up the access. That area is right here.
- 14 Q. Okay. Thank you. And, now, on this -- excuse me, I'm
- 15 crowding you a little bit here. Up here, in the top of
- 16 this particular pad, and this is Tower Pad T-17. Does
- 17 that dark shaded area represent a wetlands impact?
- 18 A. (LaFrance) Yes, it does.
- 19 Q. Okay. Now, looking at the shape of that turbine pad
- 20 area, it's not perfectly round, it's kind of long and
- 21 oblong, I guess, right?
- 22 A. (LaFrance) Yes.
- 23 Q. And. Would it be possible to redesign the shape of
- 24 that turbine pad and avoid that wetland?

[WITNESS PANEL: Lobdell | LaFrance]

- 1 A. (LaFrance) It's possible.
- 2 Q. Okay. Would it be expensive to do that?
- 3 A. (LaFrance) I think, no, it would probably impact the
- 4 primary and most advantageous location for the turbine
- 5 itself. But, in terms of the design process, it
- 6 wouldn't be expensive to relocate.
- 7 Q. Okay. Would there be any impact on public health and
- 8 safety to rearrange that pad a little bit and avoid
- 9 that wetland impact?
- 10 A. (LaFrance) No.
- 11 Q. Okay. All right. I'd like to see Page or Sheet Number
- 12 125.

13 MR. ROTH: Mike, can you identify for

14 the record what the exhibit is of the charts, the plans, I

15 think it's Exhibit -- I think it's their Exhibit 57.

16 MR. IACOPI NO: Actually, it's Petitioner

17 2.2. It's Appendix 57, within that exhibit. And, for the

18 Committee members, that's Volume 6. And, you should have

19 a CD-ROM in there. And, these plans, as I understand it,

20 are on that CD-ROM.

21 BY MR. ROTH:

- 22 Q. Now, this pad is, my guess is also located along -- I
- 23 asked whether this pad was also located on the Mount
- 24 Kelsey string?

[WITNESS PANEL: Lobdell | LaFrance]

- 1 A. (LaFrance) No, this is actually on the Dixville turbine
- 2 string.

3 Q. Okay.

4 A. (LaFrance) But, again, this is Sheet 125, which, if you  
5 look on this plan, is right here (indicating).

6 Q. Okay. Thank you. And, if you can show that sheet  
7 again. Is that dark irregular shaped figure in the  
8 middle of the pad, is that a wetland?

9 A. (LaFrance) Yes.

10 Q. So, I mean, this is maybe just a "please really"  
11 question. There was really no other way to put that  
12 turbine up without building it right smack in the  
13 middle of a wetland?

14 A. (LaFrance) Yes.

15 Q. Okay. I'd like to see Sheet Number 127.

16 MS. GEIGER: Mr. Chairman, if I could.  
17 I don't object to this line of questioning. But I think  
18 we've already had an admission from these witnesses that  
19 it would be possible to go through all of the plans and  
20 identify areas where wetlands could be somewhat reduced or  
21 mitigated. I'd just like to inquire of Mr. Roth as to  
22 whether or not he intends to go through every set -- every  
23 sheet on the plans where he thinks that might be possible?

24 MR. ROTH: I went through, I sat down

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[WITNESS PANEL: Lobdell |LaFrance]

1 last night, and, on my little laptop, I went through these  
2 plans. And, I'm not a wetlands expert, I'm not an  
3 engineer. And, I found, you know, six or seven of these  
4 opportunities to slightly re-orient turbine pads or roads  
5 to avoid obvious wetland impacts. Now, if I can do that  
6 in the space of about an hour and a half on my laptop, at  
7 11:00 at night, I don't know why the Project cannot do

8 that in a more systematic way and get it done well. And,  
9 I guess I'd like to, I've got, let's see, this is 127,  
10 I've got, after this one, I've got three more to look at,  
11 and I think I'd like to make the point.

12 CHAIRMAN GETZ: Well, I think the basic  
13 question was "how many?" And, the answer is "three". So,  
14 let's see them.

15 MR. ROTH: Three more after this one.

16 CHAIRMAN GETZ: Okay.

17 MR. ROTH: Okay.

18 BY MR. ROTH:

19 Q. Now, Mr. LaFrance, on this one again, we see a little  
20 wedge, if that turbine pad circle is a clock, the wedge  
21 looks like it's about 5:30. Is that a wetlands impact?

22 A. (LaFrance) Yes, it is.

23 Q. And, is it possible to redesign that pad ever so  
24 slightly and avoid that wetland?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. Yes, it probably is. I think what we're looking at --  
2 there's several different masters we have to adhere to  
3 here. And, we've got road geometry issues, we've got  
4 ideal turbine sites, we have certain minimum  
5 footprints, turning radii, that sort of thing. So, I  
6 guess I don't want to leave the impression that  
7 minimizing wetland impacts a great deal more is an easy  
8 feat. Yes, we can move things around, but we've been  
9 moving things around for a year, and we're about as far  
10 as -- you know, you get to a point of diminishing  
11 returns. I think, if you look at that wetland impact,  
12 you know, that's -- what's that, 1,500 square feet

13 perhaps. You know, maybe we could rotate the pad  
14 clockwise and minimize or reduce the impacts. It's  
15 possible. I'm not going to say "it's impossible".

16 Q. In fact, in the meeting that we had in my office, which  
17 you weren't at, but we had someone from your office on  
18 the phone, we discussed the possibility that instead of  
19 using a slope there, using a retaining wall. Isn't it  
20 possible you could avoid that wetland by simply using a  
21 retaining wall around that wetland?

22 A. (LaFrance) I did look at -- yes, to answer your  
23 question.

24 Q. Okay.

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (LaFrance) I did look at the supplemental testimony  
2 regarding the use of retaining walls. And, in my  
3 testimony addressed my opinion on their use. I don't  
4 think they're appropriate.

5 Q. Okay. In no instance is use of a retaining wall along  
6 the Project an appropriate thing to do to avoid a  
7 wetland?

8 A. (LaFrance) I don't believe so.

9 Q. Okay. So, despite -- you have 600 impacts, at least in  
10 theory, you don't think on any occasion is it worth --  
11 is it appropriate to use, even a single time, a  
12 retaining wall to avoid that wetland impact?

13 A. (LaFrance) I don't, for two primary reasons. And, I  
14 won't dwell on this. But, when you start talking about  
15 retaining walls, we've shown these slopes at one and a  
16 half to one, which is just as steep as we would dare  
17 show them, in an effort to minimize the wetland impact.

18 If you want to further minimize impact by using  
19 retaining walls at the toes of these slopes, you're  
20 really talking about an engineered system. Where  
21 you're using some sort of a pre-engineered retaining  
22 wall structure, we've all seen the concrete, segmental,  
23 allen block, or ready-rock walls. They require  
24 reinforced earth. It's an exercise to put one of these

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[WITNESS PANEL: Lobdell | LaFrance]

1 systems in. That material has to be imported from,  
2 trying to think of the closest place, Gorham or North  
3 Conway. It's not only expensive, but it's  
4 time-consuming to install them. Ultimately, you're  
5 going to create a vertical face that's going to be more  
6 difficult for wildlife to maneuver. I mean, if you  
7 think about something coming up to a 2, 4-foot, 6-foot  
8 high vertical face, there's no way they're going to be  
9 able to get up over that. And, the other thing that I  
10 have that's a significant concern for me is that the  
11 equipment that we're going to use to assemble these  
12 towers, the crane ways between 750,000 and a million  
13 pounds, depending on how you get it fitted. This thing  
14 is a huge piece of equipment. I have some real  
15 concerns about designing retaining walls to support  
16 that weight. You know, we've all played with the Tonka  
17 trucks, you push them down on a fell slope, and it  
18 wants to push out on the bottom. And, you know, I  
19 don't want to be the guy who designed the retaining  
20 wall, you know, on the front page of the Union Leader,  
21 there's the crane down over the bank. It just makes me  
22 nervous. So, for the return in wetland impact

23 minimization, for the expense of putting these walls  
24 in, I just don't think it's worth it.

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[WITNESS PANEL: Lobdell | LaFrance]

1 Q. Okay. I'd like to look now at Sheet 129.

2 CHAIRMAN GETZ: I guess for production  
3 purposes, can you tell us what the next three sheets are,  
4 so we can get them --

5 MR. ROTH: Well, 129 and 131 are again  
6 turbine pad locations that I wanted to ask whether it was  
7 possible to re-orient or reconfirm them.

8 BY MR. ROTH:

9 Q. And, again, this turbine pad location, the dark bits  
10 that are at approximately 3:00, 5:00, and 8:00, those  
11 are wetlands impacts?

12 A. (LaFrance) Yes.

13 Q. And, now, I guess I would admit that this may be a  
14 closer call, at least from even my own uneducated  
15 perspective, but is it possible to re-shape that  
16 turbine pad so that you avoid those wetlands impacts?

17 A. (LaFrance) This one, probably not.

18 Q. You couldn't make it -- you couldn't make it kind of  
19 raspberry-shaped?

20 A. (LaFrance) Well, the problem we have is, we need a  
21 circle that's about circular, and 200 feet in diameter,  
22 to put the turbine components, the tower sections down,  
23 and have a crane pad and be able to swing. So, in some  
24 instances, we've elongated it, but we can't just turn

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[WITNESS PANEL: Lobdell | LaFrance]

1 it into a banana, because that's not what we want to do  
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2 to maintain and minimize wetland impacts. We really  
3 need kind of that round circle. And, if you look here,  
4 we've got jurisdictional wetlands here and here and  
5 here. So, if you look at this particular site, the  
6 only other place that you could fit this circle where  
7 you wouldn't have impact is probably right there. And,  
8 if you look at this mapping, the closer these lines are  
9 together, the steeper it is. And, this pad has to be  
10 flat when we're done. So, this is the only really  
11 relatively flat spot. This is just far too steep for a  
12 turbine pad. So, in this particular case, I don't  
13 think that there's anything we could have done. Even  
14 if we moved it over here, by the time we create the  
15 turning radius to get the crane in there, we're  
16 certainly going to hit this one, and maybe these two,  
17 maybe that one (indicating).

18 Q. Okay. But, some additional drawing board work could be  
19 done to work through that and make that decision in the  
20 end, correct?

21 A. (LaFrance) Yes. The earlier ones, I think that, you  
22 know, we might be able to move them around. But, I  
23 mean, one thing I just want to point out is that, you  
24 know, this plan set is a result of an iterative process

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1 that we went through for a year. So, you know, I don't  
2 want to give anyone the impression that we designed  
3 this Project without making wetland impact minimization  
4 a priority.

5 Q. Can we look at Sheet Number -- that was 131 -- no, that  
6 was 129, right? So, can we look at Sheet 131. And,

7 again, we're looking at -- this looks like it's at the  
8 end of a turbine string?

9 A. (LaFrance) Yes. This one's right at the end of the  
10 Dixville turbine string, right up here, the very last  
11 sheet on the Project. So, it's the most northernmost  
12 point on the Project.

13 Q. And, there used to be another one further along  
14 somewhere, is that correct?

15 A. (LaFrance) Yes.

16 Q. And, that one was taken off -- do you know why that one  
17 was taken off?

18 A. (LaFrance) I don't.

19 MR. DECKER: Yes. There was -- it was  
20 behind, that's T-1, so there was another one kind of to  
21 the south and east of it. What happened was, there would  
22 be too much sector management, when the blade kind of  
23 turned into the wind -- it would cause sector management,  
24 that's why we took out the turbine behind it.

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1 MR. ROTH: Okay.

2 MR. DECKER: Meaning that -- "sector  
3 management" means that one turbine turns off when a  
4 turbine is tilted in a certain direction facing the wind.

5 MR. ROTH: Okay. And, was that sector  
6 management problem caused by the existence of this one?

7 MR. DECKER: That is correct.

8 MR. ROTH: Okay.

9 BY MR. ROTH:

10 Q. And, that dark patch crossing the turbine and then up  
11 -- in the location, and then up in the right-hand --

12 upper right-hand corner of the circle, those are  
13 wetlands impacts?  
14 A. (LaFrance) Yes.  
15 Q. And, there's no way to swing that location, either to  
16 work in a downwards direction or upwards direction, one  
17 way or the other, to avoid those wetlands?  
18 A. (LaFrance) The problem we have here, again, is the  
19 turbine siting takes into account a lot of parameters,  
20 not the least of which is this is the summit of the  
21 land here, so this is the high point on the ridge. We  
22 can't really go down this way, because it's very steep.  
23 And, if we go this way, we're on the lee side of the  
24 ridge. So, you want that turbine to be where the wind  
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1 blows, first and foremost, so that's why it's where it  
2 is.  
3 Q. Okay. Let's look at Number 133, and that's the last  
4 one. Now, what is that thing?  
5 A. (LaFrance) This thing?  
6 Q. That dark shape there.  
7 A. (LaFrance) That's the Kelsey staging area.  
8 Q. Okay. And, that dark line that crosses through it,  
9 what is that?  
10 A. (LaFrance) That's an intermittent stream.  
11 Q. Okay. So, you're constructing the Kelsey staging area  
12 on top of a stream?  
13 A. (Lobdell) Can I add something here? This site is  
14 currently a logging yard, recent, within the last two  
15 or three years. That entire area is covered with wood  
16 debris, maybe three or four feet thick. We toured that

17 with DES and the Corps of Engineers. That stream, it  
18 is, by definition, a "wetland", but it's a disturbed  
19 stream through that area. So, the idea is to use this  
20 for a lay-down area, and then restore the entire site.  
21 So, it will be a vast improvement, in terms of the  
22 conditions that are out there now.

23 Q. Okay. Right now, does the stream, notwithstanding the  
24 presence of the logging activity, does the stream flow

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1 through there in some fashion?

2 A. (Lobdell) In some fashion, the stream actually goes  
3 underneath the brush, the piles of debris, and comes  
4 out. It's literally right in the middle of a yard.

5 Q. Okay. And, when you use it for a -- you said a  
6 lay-down area for Kelsey, are you going to cover it  
7 with gravel and crushed rock?

8 A. (Lobdell) Yes. I'm not sure of the exact -- I can't  
9 recall the exact plan, but it is an area that -- one of  
10 the impact areas.

11 Q. Okay. But, I guess, if you can answer the question, is  
12 it going to be covered with gravel and crushed rock if  
13 you use that as a lay-down area?

14 A. (Lobdell) I can't without -- maybe Steve, Mr. LaFrance  
15 --

16 A. (LaFrance) Yes.

17 Q. Okay. And, when you're done with it, are you going to  
18 remove the crushed rock and gravel from the site?

19 A. (LaFrance) We had not intended to do that.

20 Q. Okay. And, so, when you say that it will be "vastly  
21 improved at the end", those improvements don't include

22 restoring that stream, do they?

23 A. (LaFrance) Well, let me show you what's going to happen  
24 on the grading plan. The stream currently, as you  
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1 said, follows the black line. What will happen is, it  
2 will go around this fill area, into this sediment  
3 basin, that will be temporary erosion control, and then  
4 around and back down and reconnected down here. So,  
5 what will happen is, when we're done with this site, it  
6 will get reveged. And, we don't have a restoration  
7 plan to relocate the stream. So, it will go around the  
8 outside of the fill, once the Project is complete.

9 A. (Lobdell) What you don't see on here is this is a very  
10 steep slope, and the skidders ran directly up and down.  
11 So, there's eroding soil from these skidder ruts coming  
12 straight down onto this site. So, by putting it along  
13 -- by stabilizing this whole area and having this  
14 retention pond here, we're eliminating a tremendous  
15 amount of sediment that's now going further downstream.

16 MR. ROTH: Okay. Thank you. That was  
17 good. I don't have anything else.

18 CHAIRMAN GETZ: No, I do believe you  
19 have one confidential question, correct, on the cost of  
20 the pads or the pad construction, is that --

21 MR. ROTH: Right.

22 CHAIRMAN GETZ: Okay. I'm going to ask  
23 anyone who has not currently signed a confidential  
24 agreement in this proceeding to please leave the room for

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1 a few minutes.

2 (Short pause)

3 CHAIRMAN GETZ: So, Mr. Roth, please  
4 proceed.

5 BY MR. ROTH:

6 Q. Okay. The question was "How much will the work on the  
7 roads and the turbine pad areas cost?"

8 A. (LaFrance) Granite Reliable Power requested proposals  
9 from contractors based on a preliminary set of plans  
10 that we prepared. Using that preliminary set of plans,  
11 the budget estimates for the site work and foundation  
12 work for the project was \_\_\_\_\_, and turbine  
13 assembly.

14 MR. DECKER: The total balance of plans.

15 CHAIRMAN GETZ: Yes, let's get that  
16 clear at the end. Could you complete that sentence? It  
17 was \_\_\_\_\_ for --

18 WITNESS LaFRANCE: Well, I stopped when  
19 I said "foundation", but it also includes turbine assembly  
20 as well, standing them up, electrical work; project  
21 complete, essentially.

22 CHAIRMAN GETZ: Okay.

23 BY MR. ROTH:

24 Q. So, that's not just for the roads and grading and  
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1 establishing the turbine pads?

2 A. (LaFrance) No. We did not -- Horizons did not do an  
3 independent cost estimate for this Project. That  
4 \_\_\_\_\_ was the contractor's estimate for the

5 entire construction. It may have contained site work  
6 costs. I didn't look at it in enough detail to recall  
7 what the breakout was.

8 Q. And, in your experience with projects like this, what  
9 would you expect to see in terms of overruns from the  
10 preliminary set of plans, or, maybe it wouldn't be an  
11 overrun, but the difference between the final cost and  
12 the actual -- and the estimated costs now?

13 A. (LaFrance) I'm not comfortable answering that question.  
14 Because I don't -- I'd feel much better if I had a  
15 number from a contractor based on the current set of  
16 plans, after the revisions we've made and the  
17 adjustments to the road design, before I'd feel  
18 comfortable talking about any overrun or potential  
19 underrun. In other words, the price that we got from a  
20 contractor today would be different than the price we  
21 got a year and a half ago, because time has gone by,  
22 and things have changed a little bit, and the plans  
23 have been revised.

24 MR. ROTH: Okay. I guess I'm done with  
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1 confidential questions. I have probably one more that  
2 wouldn't be confidential.

3 CHAIRMAN GETZ: Would someone summon the  
4 public please.

5 (Short pause)

6 CHAIRMAN GETZ: Thank you. Please  
7 proceed, Mr. Roth.

8 BY MR. ROTH:

9 Q. Has Horizons ever done a project this large before?

10 A. (LaFrance) No.

11 MR. ROTH: Thank you.

12 CHAIRMAN GETZ: Okay. Thank you.

13 Questions from the Subcommittee? Mr. Northrop.

14 MR. NORTHRUP: I've got a few fairly  
15 simple questions really, I think.

16 BY MR. NORTHRUP:

17 Q. Mr. LaFrance, some of your earlier testimony was about  
18 road widths, and I'm not quite sure if I have them  
19 down, but correct me if I'm wrong. I think you said  
20 that the road from Route 16, to the lay-down site, was  
21 going to be 20 feet wide. And, then, from the lay-down  
22 site to the ridgeline, 25 feet wide. And, from the  
23 ridgeline -- or, along the ridgeline between the sites,  
24 the road was going to be 34 feet wide. Is that

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1 correct?

2 A. (LaFrance) That's correct.

3 Q. And, my question is, why is the ridgeline road the  
4 widest? Does that have to do with how it follows the  
5 terrain or how it's being used or --

6 A. (LaFrance) It's not related to the terrain, it's  
7 because it has to accommodate the crane. The crane  
8 will be brought up to the ridgeline and assembled up  
9 there. Once it's assembled, it will be walked across  
10 the ridgeline to the different turbine sites. And, the  
11 crane, because of its size, requires a 34-foot wide  
12 surface.

13 Q. Okay. So, to get the crane up there, it comes up in  
14 sections or pieces or something?

- 15 A. (LaFrance) That's correct, yes.
- 16 Q. Okay. And, there was also some discussion about the
- 17 Mitigation Plan, allowing for revegetation to
- 18 eventually come up to the edges of the road, so that
- 19 the actual road surface remains is 12 feet wide. How
- 20 much traffic do you anticipate or how much traffic will
- 21 there be on, actually, on all the roads, but at least
- 22 on the ridgeline road? Will, and this is after
- 23 construction, will maintenance vehicles be driving on
- 24 that a lot? Is it ten trips a day? One trip a month?

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- 1 Do you know much use that road will have during the
- 2 life of the Project?
- 3 A. (LaFrance) I can't answer that question. Only from
- 4 some discussions with the folks at Granite Reliable
- 5 were talking about infrequent visits for maintenance
- 6 purposes. The turbines can be monitored remotely.
- 7 Q. Uh-huh.
- 8 A. (LaFrance) So, it's not even on a daily basis, I don't
- 9 believe. But I'm not that familiar with the operation
- 10 and maintenance of these facilities.
- 11 Q. Okay. And, actually, that leads me, the operation and
- 12 maintain part, to another question. You had said that
- 13 Horizons has not prepared an Operation and Maintenance
- 14 Plan for the road system, and, again, correct me if I'm
- 15 wrong, but I think you said it's "unusual" for you to
- 16 prepare such a plan. And, if it is, or, if it is
- 17 "unusual" for Horizons to do that, who would normally
- 18 do an Operations and Maintenance Plan? Would that be
- 19 another entity or something?

20 A. (LaFrance) No. I think, if one were required, we would  
21 probably be the appropriate entity to prepare it. But  
22 I've never heard of one, as it relates to maintaining a  
23 ditch and culvert system. We've never been asked to  
24 prepare one for any application. You often see  
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1 requirements for erosion control plans for work during  
2 construction. But, once construction is complete, I've  
3 never had an instance where we've been asked to prepare  
4 or seen it as a permit condition, the preparation of a  
5 plan for maintenance of the drainage system. I have  
6 seen it on commercial developments, where there were  
7 treatment units required, like underneath parking lots,  
8 for sediment removal. I've seen it there. But I've  
9 never seen it on open drainage structures.

10 Q. Okay. Thanks. And, just my last question, I think you  
11 had said that you hadn't been -- had not been to any  
12 other Noble windparks. Have you been to any other  
13 windpark? Any other wind project, such as this,  
14 something that maybe not Noble has done, but other, any  
15 other wind projects other than this?

16 A. (LaFrance) I have visited a couple in Hawaii, while on  
17 vacation.

18 MR. ROTH: Is that where you got the  
19 tie?

20 WITNESS LaFRANCE: No, that's my wife.  
21 My wife dresses me.

22 MR. NORTHROP: That's it.

23 CHAIRMAN GETZ: Other questions?

24 Mr. Janelle.

[WITNESS PANEL: Lobdell | LaFrance]

1 MR. JANELLE: Just a couple questions.

2 BY MR. JANELLE:

3 Q. Mr. LaFrance, do you have a sense for the amount of  
4 material that you'll need to bring in to build these  
5 roads or is it pretty much all going to come from the  
6 site?

7 A. (LaFrance) Most of our common fill, for the cuts and  
8 fills, will be on site. There aren't many  
9 opportunities for on-site gravel.

10 Q. Uh-huh.

11 A. (LaFrance) We've checked with the contractors who have  
12 built the logging roads in the area for the last 30  
13 years. And, generally speaking, the material that they  
14 use for gravel isn't what you or I would call "gravel".  
15 We have a couple of on-site -- off-site sources that  
16 have good clean material. Rough numbers, we were  
17 talking about importing about a half a million yards of  
18 gravel for bank-run and crush, what's going on the  
19 surface of the road. Any stone necessary for slope  
20 stabilization and ditch lines would be manufactured on  
21 site.

22 Q. Okay. Thanks. You mentioned "monitoring the site".  
23 Do you have a feel for how much you would open up at  
24 one time when you're building the site?

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1 A. (LaFrance) We're limited, in the Alteration of Terrain  
2 Permit, to disturbance area. In order to meet the  
3 schedule that we need to meet, we're going to have to

4 work in multiple areas at the same time. So, we're  
5 talking on the order of probably 15 or 20 acres at a  
6 time.

7 Q. Okay. And, as far as monitoring goes, I assume, if  
8 that were your firm, you -- whoever the person that  
9 does that would have the ability to somehow control the  
10 contractor, if they saw an erosion issue and needed an  
11 adjustment or he could stop the work for some reason?

12 A. (LaFrance) That's generally the way the contracts are  
13 written. Is that, the engineer, we don't actually  
14 supervise the work. It's an important distinction.  
15 What we do is we observe the work, to ensure that it's  
16 done in substantial conformance with the plans and the  
17 specifications. Generally speaking, we don't have the  
18 authority to "stop work", that can really only be done  
19 by the owner. But what we act as is the owner's eyes  
20 and ears out there. And, the stick that we use to get  
21 compliance is essentially to tell the contractor that  
22 he won't be paid for the work that he's doing because  
23 it's not in conformance. So, generally, that brings  
24 the non-conforming work to a stop.

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1 Q. Okay. One other question. On your culverts, you said  
2 that, or I thought I heard you say, that there's --  
3 you've tried to put in many culverts to get water from  
4 one side of the road to the other. And, you're  
5 designing for a 10-year storm. Are there more -- Is  
6 there more capacity with all those culverts than a  
7 10-year storm or, I guess what I'm getting to, is there  
8 more culverts there than is needed for the 10-year

9 storm to get the water across or is that not the case?  
10 Is it just for the 10-year storm?  
11 A. (LaFrance) I can't say it's a blanket "yes" or a  
12 blanket "no". There are some areas where we have  
13 enough additional culverts that we really could handle  
14 a storm event larger than a 10-year. But there may be  
15 areas where the culvert's sizing was such that it  
16 really accommodates the 10-year storm. I will say that  
17 the ditches, probably without exception, can handle a  
18 lot more than the 10-year event. So, if we have a  
19 situation where we have a particular culvert that's  
20 over-topped or gets plugged, I'm fairly confident that  
21 water can travel down the ditch to the next culvert.  
22 We also have rubber diverters in the gravel roadway to  
23 divert water off the gravel surface. Because that  
24 tends to be a problem with gravel roads, you create the  
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1 two wheel ruts, and then the water wants to run down  
2 the wheel ruts, instead of off the road. So, we've got  
3 rubber diverters to get that water off and into the  
4 ditch line.

5 MR. JANELLE: Thank you.

6 CHAIRMAN GETZ: Mr. Normandeau.

7 DIR. NORMANDEAU: Thank you. And,  
8 excuse me, Mr. Chairman, after I ask my question, as I  
9 mentioned earlier, I'm going to have to leave.

10 BY DIR. NORMANDEAU:

11 Q. Mr. Roth was discussing "routes through the pads". Can  
12 you explain what that meant, routing through the pads  
13 with the roads for construction?

14 A. (LaFrance) Oh. I think -- Yes. I think what he was  
15 referring to is, if we were to assume that this was a  
16 pad, even though it's not, --

17 Q. Right.

18 A. (LaFrance) -- rather than have the road go by the pad,  
19 have the road go through the pad. And, as I indicated  
20 in my testimony, we can do that. But the problem with  
21 it is, is that, when we're working on this turbine site  
22 -- let me put one up. When we're working on this  
23 turbine site, depending on where we are in the stage of  
24 work, we've got an excavator there to dig, we've got

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1 potentially blasters, we've got concrete trucks coming  
2 and going. So, we really need a work area that is  
3 independent of the haul road, because you've got  
4 activities going on farther down. If we put the road  
5 through the turbine site, there may be an opportunity  
6 to minimize wetland impact. Unfortunately, it's like  
7 trying to put the road through the middle of a work  
8 site. And, there's going to be a lot of activity. So,  
9 it becomes fairly difficult to figure out how to  
10 assemble that turbine, and also maintain activity  
11 beyond. And, that's why we have done it the way we've  
12 done it.

13 Q. And, if, in fact, it was -- you did go through the  
14 site, would there be room, once they were all erected,  
15 if there was a mechanical or a failure problem further  
16 down the line, would you be able to get by one to go  
17 service another?

18 A. (LaFrance) Without really understanding the

19 configuration, I don't know. It would be more  
20 difficult. We might have to shut the turbine down to  
21 get by it. I think most of the difficulty would be  
22 during construction. You know, you've got this 500-ton  
23 crane there, and it's a little bit shaky. You'd like  
24 to have that activity going on independent of trying to  
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1 drive by.

2 DIR. NORMANDEAU: Okay. Thank you.

3 CHAIRMAN GETZ: Mr. Harrington.

4 BY MR. HARRINGTON:

5 Q. Okay. Just getting back to the roads for a second. I  
6 guess we stated we had -- there's going to be different  
7 widths of the roads, depending on the location, for  
8 various reasons. Now, there was also a statement that  
9 the roads would be "returned to 12-foot wide", and  
10 that's where we get into the different types of seeds  
11 being planted and so forth. So, now, I guess my  
12 question would be, in order to maintain these turbines,  
13 there's the possibility that you'd have to bring the  
14 crane back up there for some reason, or maybe a turbine  
15 blade showed some type of cracking or something that  
16 had to be replaced. Could you do that and not have to  
17 re-open up these 12-foot wide roads to back to some  
18 wider amount?

19 A. (LaFrance) It's unlikely that we would be able to bring  
20 a replacement component up there, a blade or a tower  
21 section or a nacelle, without having to go back and  
22 widen the road again.

23 Q. So, and, in fact, because of the growth time included  
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24 here, more than likely these roads -- there's a good  
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1 possibility, let's just say, it's possible that these  
2 roads will never be revegetated down to the 12-foot  
3 wide area. Because, if it was, let's say, seven or  
4 eight years down the road, you had to clear-cut them  
5 out again to bring in a crane or a blade or something  
6 like that, then, you know, maybe five or six or seven  
7 years after that you had to do it again, there would be  
8 a continual process of cutting these. So, you would  
9 never really see them grow back to where they were  
10 pre-construction?

11 A. (LaFrance) That's correct. The only thing I would add  
12 to that is, if we had a disturbance footprint that was  
13 100 feet wide in construction, if we had to go back, we  
14 would only have to cut an area wide enough to get the  
15 Goldhofer or the crane or the piece of equipment that  
16 we need through. So, we wouldn't be going all the way  
17 back to day one. But, you're right, we'd have to widen  
18 that 12-foot to something wider than that.

19 Q. There was a lot of discussion on how this was going to  
20 operate in the field in your job, and you stated you  
21 don't have "stop work" authority, but you could maybe  
22 have "stop payment" authority, to some extent. So,  
23 you're going to have -- your engineer is going to be in  
24 the field, sort of overseeing or observing the Project  
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1 then?

- 2 A. (LaFrance) I haven't worked out the details with  
3 Granite Reliable Power, but that's my understanding. I  
4 mean, it's a permit condition that we're there at least  
5 to enforce all conditions of all permits.
- 6 Q. And, there was a lot of discussion with this "rock  
7 sandwich" type thing, and when that would be done and  
8 so forth. But, again, I'm going to assume that this is  
9 not -- this would be one of many types of unanticipated  
10 things that you might run into, where your field  
11 engineer would have to make some decision, because that  
12 exact detail wasn't covered in the plans?
- 13 A. (LaFrance) That's a fair assessment.
- 14 Q. This is a question on wetlands mitigation, and I think  
15 this is for Mr. Lobdell, in his testimony. It says  
16 "Please describe the Project's proposed plans for  
17 mitigating the impact on wetlands." And, it says "GRP  
18 proposes to mitigate 13.5 acres of wetland impact  
19 primarily by upland buffer preservation, vernal pool  
20 creation, and restoration of perennial and seasonal  
21 stream crossings." So, there's been a lot of  
22 discussion on the 13 and a half acres of wetlands. So,  
23 let me just start with a couple of questions. We had a  
24 lot of discussion on "could we avoid this much wetlands

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- 1 by moving this pad this way" or "moving this road this  
2 way", etcetera. Of all those examples that we went  
3 through, how much, if you were able to avoid all of the  
4 stuff that we were talking about in those examples,  
5 would that drop the 13 and a half down to one acre or  
6 would it move it to 12 and a half? Or, can you even

- 7 make it -- even just ballpark guess?
- 8 A. (LaFrance) I'll make a ballpark guess, and I'll qualify  
9 it as that.
- 10 Q. Uh-huh.
- 11 A. (LaFrance) I think we might be able to reduce -- well,  
12 it depends on how far we go. If we're talking about  
13 some of the turbine twists that Mr. Roth was referring  
14 to, you were talking maybe -- maybe half an acre. If  
15 we were to add the retaining wall systems that Mr.  
16 Sanford suggested in his supplemental testimony and  
17 Mr. Roth alluded to, we might have a total of an acre  
18 of additional wetlands impact reduction. Now, those --
- 19 Q. So, either way, it would leave somewhere between,  
20 ballpark again, 12 and a half to 13 acres of wetlands  
21 that were impacted?
- 22 A. (LaFrance) Right. We're never going to cut it in half.  
23 It's just not going to happen.
- 24 Q. Okay. And, then, getting back to Mr. Lobdell on this.

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- 1 Can you just kind of give us a little bit more  
2 explanation of what these mitigation steps are? It  
3 says, first, "upland buffer preservation". Can you  
4 just give us the two minute version of what that  
5 involves?
- 6 A. (Lobdell) Of upland buffer preservation?
- 7 Q. Yes. It's what's stated in your testimony of how  
8 you're going to mitigate the impact on wetlands, and  
9 that was the first thing that you said would be done.
- 10 A. (Lobdell) Right. Well, in the process, you know, the  
11 first is the avoidance and minimization, and then

12 mitigating all those unavoidable impacts. I might add  
13 to Steve's comments of your previous question, that  
14 DES, after Horizons' plan revisions, found in their  
15 findings that the -- that they had -- that the plans  
16 met the avoidance and minimization requirements.

17 Q. Well, what I'm assuming here is, let's say whatever is  
18 going to be done is going to be done.

19 A. (Lobdell) Yes.

20 Q. And, now you're left with a certain amount of acreage  
21 that has wetland that's been impacted.

22 A. (Lobdell) Right.

23 Q. And, you stated that this is the way you were going to  
24 mitigate that.

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1 A. (Lobdell) Yes.

2 Q. And one of them was "upland buffer preservation". I'm  
3 trying to figure out what that exactly means?

4 A. (Lobdell) Okay. What it means is that the Wetlands  
5 Compensatory Mitigation Standard for the state, they  
6 have developed ratios for various mitigation processes.  
7 So, there's -- you could have creation or restoration  
8 or preservation. The State's Preservation Ratio is a  
9 10 to 1 ratio. So, for every acre of impact, you need  
10 to preserve 10 acres. And, generally, that's an area  
11 that buffers a wetland or a stream.

12 Q. Okay.

13 A. (Lobdell) The proposed ratio for this 620 area, and,  
14 again, the State's minimum standards are 10 to 1 for  
15 forested wetland mitigation, what we're proposing is 46  
16 to 1. So, it's a substantial -- substantially more

17 area than the minimum requirement.  
18 Q. And, then, the second one, it says "by vernal pool  
19 creation". Now, I understand what that means. I  
20 guess, I mean, I understand what a "vernal pool" is.  
21 But can you tell us, do you actually go out and do you  
22 dig holes and fill them up with -- put them in such a  
23 place that they will at least part of the year be full  
24 of water?

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[WITNESS PANEL: Lobdell | LaFrance]

1 A. (Lobdell) Yes. We inventoried the vernal pools within  
2 the Project area prior to the construction design. We  
3 found that there was about eight vernal pool impacts  
4 that were unavoidable. Most of these vernal pools are  
5 man-made, under the new State definition that came out  
6 in --

7 Q. Excuse me. When you say "man-made", by previous  
8 logging operations?

9 A. Yes. Many of them, of the 36 that we found in the  
10 whole Project area, only nine of them were natural.  
11 The rest of them were basically skidder ruts or that --  
12 that the frogs and salamanders were breeding in.  
13 Others were excavator -- small excavation burrow areas,  
14 where they had taken out a little material to build the  
15 logging road and left a little bit of a pond there.  
16 But we're going to mitigate those vernal pool impacts  
17 by creating some vernal pools in the area. And,  
18 basically, it is -- site selection is very critical.  
19 So, we're going to base -- DES's conditions, we're  
20 going to go out with biologists from DES and from Fish  
21 & Game, find some sites, do a bit of design work that

22 DES will approve, and then we'll construct the sites.  
23 And, it's generally, on average, they're around 18  
24 inches of water depth, and that has to maintain that  
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[WITNESS PANEL: Lobdell |LaFrance]

1 water depth for approximately two months in the spring.  
2 Q. And, the last one is "restoration of perennial and  
3 seasonal stream crossings". And, I guess, when you say  
4 "stream crossing", crossing what?  
5 A. (Lobdell) Currently, particularly along Dummer Pond  
6 Road and the existing road system, there are culverts  
7 in both perennial and seasonal streams, these culverts  
8 are under-sized, they have no headwalls, they're  
9 eroding. What's proposed is to remove these culverts  
10 and put in box culverts. So that, instead of the fish  
11 or other aquatic life that currently may be blocked  
12 from going across the road, because it can't make it up  
13 the culvert for whatever reason, now there will be a  
14 box culvert, with a natural stream bottom, and at the  
15 grade of the stream bed. So, the biotics will be able  
16 to move up through from across the road.  
17 Q. So, I guess, in summary on all these things, because I  
18 didn't quite grasp this until you gave us the  
19 explanation, this isn't just a bunch of ideas that you  
20 came up with that you thought were going to make the  
21 situation better, but, in fact, it's compliance with  
22 DES, it sounds almost like a formula, "this is how many  
23 acres you disturbed, this is what you've got to do to  
24 make up for that disturbance"?

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- 1 A. (Lobdel I) Correct. We're probably close to five times  
2 what the minimum requirements are, if you put all of  
3 these components together.
- 4 Q. Okay. And, one last question. There was a lot of  
5 discussion, and I think we're probably going to have a  
6 lot more on this, on this concept of putting these  
7 towers up, and, by doing this Project, there's going to  
8 be some logging activities that don't take place  
9 because of this, I'm not even getting into the details  
10 of the Mitigation Plan we're going to talk about  
11 tomorrow, but there's certainly not going to be logging  
12 where the turbines are and where the new roads are and  
13 so forth. So, I guess I'm just trying to find out, the  
14 way the discussions have been going, I've been led to a  
15 conclusion that I don't know whether it was accurate or  
16 not. So, I'll ask you people and you can let me know.  
17 Is there a different set of standards on how such  
18 long-term projects, such as this proposed wind project,  
19 are treated for -- with regards to wetlands, as  
20 compared to a more temporary project, like "I'm going  
21 to log these 100 acres, and then I'm going to go away  
22 after six months or a year and go someplace else"?
- 23 A. (Lobdel I) Well, I'll certainly answer, and Steve can  
24 add. But logging jobs are, by statute, under a  
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- 1 separate set of standards from other types of  
2 development.
- 3 Q. Okay.
- 4 A. (Lobdel I) Where the "best management practices"  
5 required are minimal compared to when you go under the

6           Alteration of Terrain process.

7    Q.    And, just getting back to this concept of, you know,

8           whether, and again this has been stated I think by Mr.

9           LaFrance, that he thought that the building of this

10          Project would actually have a net positive effect,

11          because it would prevent some logging from being done.

12          And, are these looked at cumulatively, the logging

13          effects? I mean, if you go in and you apply for a

14          permit, "I'm going to log these hundred acres this

15          year, and, then, three years later I'm going to log

16          another hundred acres, and three or four more years

17          after that I'm going to log a third hundred acres."

18          Clearly, the first hundred acres are still not back to

19          the way they were before the logging started. So, is

20          that -- does DES kind of add these things up as it goes

21          along or is each one looked at as an individual project

22          --

23    A.    (Lobdell) There's a separate permit required for each

24          hundred acres in the different years. And, then,

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1           there's a set of standards that they have to comply

2           with, for example, maybe removing culverts, putting in

3           water bars, those types of things, to close out the

4           job, and then move onto the next one.

5    Q.    But, in a project this size, I guess what I'm saying,

6           in an area this size, which encompasses thousands of

7           acres, where one landowner may own that much, I guess

8           my question is, as they log Area A, and then they move

9           to Area B, and then they move to Area C, does the fact

10          that they logged Area A and B five years ago have any

11 effect on what they have to do or the requirements that  
12 are imposed on them in Area C? I'm trying to see if  
13 there's a cumulative set of rules that gets more  
14 restrictive with time?

15 A. (Lobdell) I don't believe there's a cumulative set of  
16 rules that way. If there were to be some major  
17 violations on Job A, and more violations on Job B, they  
18 might look at Job C a little more carefully.

19 MR. HARRINGTON: Okay. Thank you.  
20 That's all I have.

21 CHAIRMAN GETZ: Dr. Kent.

22 DR. KENT: One brief question for Mr.  
23 Lobdell.

24 BY DR. KENT:

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1 Q. Could you just very briefly characterize the wetlands  
2 on the ridge top for us please.

3 A. (Lobdell) Yes. Well, they're forested wetlands, balsam  
4 fir. We did a number of data sheets up there, about 18  
5 in the wetlands, as part of the wetland delineation  
6 process. Some of them have an organic -- most of them  
7 are mineral soil, but they're shallow depths, ranging  
8 from zero for 40 inches. Some of that has an organic  
9 layer of possibly from 2 inches to 6 or 8 inches. So,  
10 they are shallow there. Some of them are in  
11 depositional areas within the rock formations.  
12 Others are stream -- where the water is running off of  
13 the ridge. I think that's about all I can say at this  
14 point.

15 DR. KENT: Thank you.

16 CHAIRMAN GETZ: Others? Mr. Scott.

17 DIR. SCOTT: A very quick question,

18 hopefully, for Mr. LaFrance.

19 BY DIR. SCOTT:

20 Q. Is it correct that there was some earlier discussion  
21 regarding maintenance of culverts and ditches. Is it a  
22 correct statement that your design is -- your design  
23 assumes proper maintenance of ditches and culverts?

24 A. (LaFrance) That's correct.

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1 Q. And, I assume you're not the one to ask if the Project  
2 is planning on maintaining the ditches and culverts, is  
3 that correct? You're not the one to ask for that?

4 A. (LaFrance) I wouldn't be responsible for the  
5 maintenance, but it would certainly be my  
6 recommendation that that occur.

7 DIR. SCOTT: Thank you.

8 CHAIRMAN GETZ: Mr. Iacopino.

9 MR. IACOPI NO: Thank you.

10 BY MR. IACOPI NO:

11 Q. The first question I have is, the "rock sandwich"  
12 construction that you discussed, is that -- is that  
13 done in tandem with culverts or does it replace  
14 culverts?

15 A. (LaFrance) In tandem with the culverts.

16 Q. And, how much of a challenge is it to design the  
17 Project with a 25-year culvert system?

18 A. (LaFrance) What it would probably -- well, we would  
19 have to go back and redo the drainage analysis, which  
20 is one of the appendices, I don't remember the number.

21 And, it's a fair amount of work from a design  
22 perspective. What it would mean to the Project is  
23 probably an increase in size for most of the culverts.  
24 In other words, they might go from a 12-inch culvert to  
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1 a 15 or a 15 to an 18. It would likely have a  
2 significant impact on the perennial stream crossings.  
3 Because, on the perennial streams, we used a little bit  
4 different approach. We used Fish & Game's new Stream  
5 Crossing Guidelines, which are based on bank full  
6 width. And, what that is is top-of-bank to top-of-bank  
7 scour lines. And, then, we increase that by 20 percent  
8 and that gives us our span. We did a couple of checks,  
9 and that's roughly equivalent to a 10-year storm. If  
10 we design them for 25-year storms, we would end up with  
11 spans that were quite a bit longer. And, I don't think  
12 that that's appropriate. Because what we're finding is  
13 that many of the crossings that we're going to replace  
14 have been there for a long time, and they're much  
15 smaller than what we're proposing to put in. And, they  
16 have been adequate for whatever period of time, 20, 30  
17 years. The drainage design software that we use is  
18 called "HydroCat", it tends to be pretty conservative.  
19 So, you know, we designed it based on the 10-year  
20 intensity. So, I can't say that it's any more than  
21 that. But I know from experience that it really  
22 represents a recurrence interval somewhat greater than  
23 that.

24 Q. The second -- well, lastly, Mr. LaFrance, you indicated

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- 1 that you expect that any construction under a  
2 certificate, if one is granted, would have to be in  
3 accordance with the plans that have been filed with  
4 this Committee, correct?
- 5 A. (LaFrance) Yes. I think my testimony was that it has  
6 to be in accordance with the plans that have been  
7 approved by DES. But I would assume that they should  
8 be the same set of plans.
- 9 Q. And, do you believe, in your opinion, at this point in  
10 time, are the plans that have been filed with us ready  
11 to go?
- 12 A. (LaFrance) Yes.
- 13 Q. Okay. And, the last question I had, there was a couple  
14 of photographs out here, Exhibit IWA-23a [IWA-X-23a?]  
15 and b, the photo of the ledge cut and the photo of the  
16 winding road. If your plans are followed, at the end  
17 of construction and -- or take it a couple of years  
18 out, is that what you would expect to see any portions  
19 of the roadways or the site look like?
- 20 A. (LaFrance) 23b is a photograph taken during  
21 construction. It's got a lot of unfinished faces, the  
22 base gravel hasn't been placed. So, that is not  
23 representative of what I would think the Project would  
24 look like upon completion.

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[WITNESS PANEL: Lobdell | LaFrance]

- 1 Q. And, how about 23a?
- 2 A. (LaFrance) 23a I think is a fairly accurate  
3 representation of at least what portions of the Project

4 will look like.

5 MR. IACOPI NO: Okay. No further  
6 questions.

7 CHAIRMAN GETZ: Anything else from the  
8 Subcommittee?

9 (No verbal response)

10 CHAIRMAN GETZ: Mr. Patch, is there  
11 going to be redirect? Or, Ms. Geiger?

12 MS. GEIGER: There will be redirect, Mr.  
13 Chairman. And, I think I might be able to cut down on  
14 some questions if I could have a moment to confer with the  
15 witnesses.

16 CHAIRMAN GETZ: Okay. Well, let's do  
17 this. Before we break for a few minutes, I really would  
18 like to get to Ms. Linowes today, and short of a mutiny on  
19 this side of the Bench. But how much cross does the  
20 Applicant have for Ms. Linowes approximately?

21 MR. PATCH: I would say no more than 15  
22 minutes.

23 CHAIRMAN GETZ: Okay. Is there anyone  
24 else who is going to have cross-examination for Ms.

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1 Linowes?

2 (No verbal response)

3 CHAIRMAN GETZ: Okay. Let's take five  
4 minutes, and then we'll come back and hear redirect.  
5 Thank you.

6 (Whereupon a recess was taken at 5:50  
7 p.m. and the hearing reconvened at 6:02  
8 p.m.)

GRP-DAY3.txt  
CHAIRMAN GETZ: Good evening. We're

9  
10 back on the record, and turning to redirect for this  
11 panel.

12 MS. GEIGER: Yes. Thank you, Mr.  
13 Chairman. And, thank you for the opportunity to consult  
14 with the witnesses. I think, by doing so, I have reduced  
15 the number of questions that I have for them, but I do  
16 have some.

17 REDI RECT EXAMI NATION

18 BY MS. GEIGER:

19 Q. Mr. Lobdell, do you remember being asked this afternoon  
20 by Ms. Linowes the question about whether or not the  
21 Project ever responded to any concerns of the Natural  
22 Heritage Bureau?

23 A. (Lobdell) Yes.

24 Q. And, do you remember that question?

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1 A. (Lobdell) Yes.

2 Q. And, do you remember your answer?

3 A. (Lobdell) Yes. I wasn't aware of any.

4 Q. Have you since become aware of any?

5 A. (Lobdell) Yes.

6 Q. I would like to show you what's been marked for  
7 identification as "Petitioner's Exhibit 2.1", which is  
8 Volume -- excuse me, "1.2", Volume 2. And, it's a  
9 document that is submitted under the tab marked  
10 "Appendix 17". Could you identify that document for  
11 the record please.

12 A. (Lobdell) Yes. It's from Stantec. It's "Subject:  
13 Rare Plant Survey in response to New Hampshire Natural

14 Heritage Bureau Review at the Proposed Windpark in Coos  
15 County, New Hampshire".

16 Q. Okay. And, what does that document represent to you?  
17 What does it mean to you?

18 A. (Lobdell) Well, it represents a -- the process is,  
19 during a wetlands application, you submit the project  
20 area to the Natural Heritage Bureau. And, they either  
21 indicate that there are some concerns or no concerns.  
22 And, it indicates that there was a concern, and that  
23 the Applicant responded to it.

24 Q. Okay. Good. Mr. Lobdell, could you describe or  
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1 explain the process by which the approximately 820 acre  
2 wetlands mitigation parcel was identified and selected?

3 A. (Lobdell) Yes, the "620 acres".

4 Q. Yes. I'm sorry.

5 A. (Lobdell) I initially looked at the entire 80,000  
6 acres, using existing aerial photography, the Coos  
7 County Soil Survey, NWI maps, and found locations that  
8 I thought would buffer important wetlands. I narrowed  
9 it down to four important -- that I thought were  
10 important possible areas. And, I conferred with Fish &  
11 Game about a couple of them. I visited them. And, I  
12 picked the one that I thought was most important, for  
13 several reasons. One, because I was looking for one  
14 that abutted existing conservation areas. And, this  
15 area that we've selected did. I wanted one that was in  
16 the headwaters of the stream, particularly Phillips  
17 Brook. Phillips Brook had been identified by a number  
18 of conservation groups as being an important watershed.

19 And, those two reasons were why I narrowed it down to  
20 those areas. I then provided that information to Pip  
21 Decker of Noble and had him take a look at it. And, he  
22 thought it was a good idea as well. So, we submitted  
23 it with the Application.

24 Q. Did anyone from any State agencies accompany you to  
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1 that particular parcel to review it for its eligibility  
2 or suitability as a wetlands mitigation parcel?

3 A. (Lobdell) Yes. In October of 2008, we visited the site  
4 with Lori Sumner, of DES, and Rich Roach, of the Corps  
5 of Engineers. And, we spent a rainy day walking that  
6 site.

7 Q. And, what position in State government does Ms. Sumner  
8 occupy?

9 A. (Lobdell) She is the Mitigation Specialist for New  
10 Hampshire Wetlands Bureau.

11 Q. Okay. So, would you consider her to be the State's  
12 expert on wetlands mitigation?

13 A. (Lobdell) Yes.

14 Q. Okay. And, did Ms. Sumner indicate to you at that time  
15 any concerns she had with that parcel?

16 A. (Lobdell) No, she thought it was a very nice area.

17 Q. Okay. Thank you. I think these next questions are  
18 probably for Mr. LaFrance. Mr. LaFrance, are you aware  
19 of any geotechnical surveys that have been conducted at  
20 the Project site?

21 A. (LaFrance) Yes.

22 Q. Could you please describe your knowledge of those  
23 surveys.

24 A. (LaFrance) S. W. Cole, which is a geotechnical concern,  
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1 with offices in Maine and New Hampshire, was retained  
2 by one of the bidders on the Project in that earlier  
3 process that I described, to go up and do some  
4 geotechnical investigation to evaluate bedrock geology  
5 for foundation design, depth to bedrock, and soil  
6 resistivity.

7 Q. And, do you believe that, beyond those geotechnical  
8 surveys, that any further geotechnical surveys would be  
9 useful in this Project?

10 A. (LaFrance) No.

11 Q. Now, I think you were asked some questions I believe by  
12 Mr. Roth about your supplemental filed testimony  
13 regarding a statement as to your belief that the  
14 Project would not have an unreasonable effect on public  
15 health and safety. Do you remember that question?

16 A. Yes.

17 Q. I think he also asked you or commented on the record  
18 that your prefilled testimony did not indicate a  
19 statement regarding whether or not you believe that the  
20 project would have an unreasonable adverse effect on  
21 the natural environment, as it relates to water  
22 quality. Do you remember that question?

23 A. (LaFrance) Yes.

24 Q. If I were to ask you that question, --

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1 MR. ROTH: I'm going to object to this  
2 question. They had an opportunity in their prefilled

3 testimony to make that statement. They chose not to.  
4 This is not an appropriate area for cross -- redirect.

5 MS. GEIGER: Mr. Chairman, I think the  
6 question is fair game. I think it was brought out on  
7 cross-examination. I think I have the right to explore it  
8 on redirect.

9 CHAIRMAN GETZ: Restate the question for  
10 me please.

11 MS. GEIGER: The question is, I just  
12 posed this to Mr. LaFrance, "Do you have an opinion as to  
13 whether or not the Project would constitute an  
14 unreasonable adverse effect on the natural environment, as  
15 it relates to water quality?"

16 CHAIRMAN GETZ: I'll permit the  
17 question.

18 BY THE WITNESS:

19 A. (LaFrance) No, I don't believe it has an adverse  
20 effect.

21 BY MS. GEIGER:

22 Q. Okay. Now, I also believe that Mr. Roth pointed you to  
23 or had you read into the record what was originally  
24 Mr. Beaulieu's initial prefiled testimony. And, I'll  
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1 direct you to the question that was asked in the  
2 prefiled, and the answer that I believe you read into  
3 the record. Could you please go through the question  
4 and answer, and read the complete answer, because I  
5 don't believe Mr. Roth asked you to read the full  
6 answer. And, would you do that please.

7 A. (LaFrance) Okay. The question was related to the  
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8 "capability to construct the project". The question  
9 was: "Please describe the capability of Noble and GRP  
10 to construct and operate this Project." And, the  
11 answer was: "Noble Environmental Power as constructed  
12 over 188 turbines across New York State totaling 292  
13 megawatts of clean renewable energy. By the end of  
14 2008, Noble is scheduled to have a total of  
15 633 megawatts of power online in New York State, making  
16 it New York's largest wind developer. In all, these  
17 projects represent a total investment of approximately  
18 \$1.3 billion in the state's renewable energy  
19 infrastructure. In addition, Noble has projects under  
20 construction in Texas and Michigan. Horizons will be  
21 acting as the Owner's Engineer, to ensure that the  
22 construction of the Project reflects the design and  
23 adhere to the applicable permit conditions for this  
24 Project."

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- 1 Q. Thank you, Mr. LaFrance. Now, this afternoon we spent  
2 some time or Mr. Roth spent some time reviewing with  
3 you some of the sheets that you prepared as part of  
4 your design for this project. And, could you please  
5 tell the Committee how many sheets in all comprise the  
6 Project plans that you were responsible for designing?  
7 A. (LaFrance) 143.  
8 Q. And, of those 143 sheets, how many of them were revised  
9 as the result of your iterative process with Department  
10 of Environmental Services?  
11 A. (LaFrance) Very nearly all of them.  
12 Q. And, were any of them --

13 MR. ROTH: I'm going to object to this  
14 line of questioning also. This is a topic for direct  
15 examination. I don't know what the relationship is to  
16 anything that came out on cross. I didn't -- you know, I  
17 never crossed him on whether there were, you know, many  
18 iterations or many amended sheets or anything. I asked  
19 him about a few specific sheets. If she wants to ask  
20 questions about a few -- few specific sheets that I  
21 crossed him on, I think that would be appropriate. But  
22 to, you know, fill the record again with new direct  
23 testimony I think is improper.

24 CHAIRMAN GETZ: Well, I disagree. I  
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1 think this is a fair redirect, given the issues that you  
2 raised in your cross-examination. And, she wants to raise  
3 generally these, what the witness did in constructing the  
4 sheets, and I think that's fair redirect. Please  
5 continue.

6 BY MS. GEIGER:

7 Q. Well, I guess the question I would have, actually, one  
8 of the questions I had was, and I believe you answered,  
9 was how many of the sheets were -- were changed or  
10 modified as a result of your consultations with the  
11 Department of Environmental Services?

12 A. (LaFrance) Nearly all of them.

13 Q. And, I guess the next question I had was, were some of  
14 those sheets changed more than once?

15 A. (LaFrance) Yes.

16 Q. And, were they changed as a result of comments that DES  
17 made in those processes?

- 18 A. (LaFrance) Yes.
- 19 Q. And, were the final set of sheets that you prepared for  
20 this Project that have been submitted to the Committee  
21 I believe as "Exhibit Number 57", those are the same  
22 sheets that were submitted to DES?
- 23 A. (LaFrance) We made some changes subsequent to the  
24 submittal to DES that we discussed earlier. Sheet 143  
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- 1 I believe has the rock sandwich. That was not part of  
2 the original plan set reviewed and conditionally  
3 approved by DES. But they have been provided with that  
4 sheet. So, that the plan set that the Committee has is  
5 the same plan set that DES has.
- 6 Q. Okay. And, DES has approved with -- or recommended  
7 approval, with conditions of the Permit Applications  
8 that were submitted to it. That's correct?
- 9 A. (LaFrance) That's correct.
- 10 Q. I think I have one final area for Mr. Lobdell. Could  
11 you please explain "wetlands mitigation" as it relates  
12 to providing mitigation for lost wetlands functions or  
13 the functions of lost wetlands?

14 MR. ROTH: I object to this question  
15 also, on the same basis. This very well would have been a  
16 very nice question to insert in his supplemental direct  
17 testimony or his first direct testimony, but it's not a  
18 proper area for redirect.

19 MS. GEIGER: Okay. I'll withdraw that  
20 question.

21 BY MS. GEIGER:

- 22 Q. Mr. Lobdell, could you tell us whether the Department

23 of Environmental Services requires that, when an  
24 Applicant, such as Noble, impacts or results in a net  
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1 loss of say 13.5 acres of wetlands, that it would be  
2 required to replace or restore an equivalent amount of  
3 lost wetlands acreage?

4 MR. ROTH: The same objection.

5 CHAIRMAN GETZ: Overruled.

6 BY THE WITNESS:

7 A. (Lobdell) No, they do not.

8 BY MS. GEIGER:

9 Q. What do they require?

10 A. (Lobdell) They require you to meet the Compensatory  
11 Mitigation Rules, which set ratios for compensating for  
12 the lost wetland functions and values. And, those  
13 ratios will range from two to one or one and a half to  
14 one for things like creation/restoration, up to ten to  
15 one, and even fifteen to one in some cases, for  
16 preservation.

17 Q. And, the Project is -- the ratios of the wetlands  
18 mitigation that is proposed for this Project is what  
19 amount?

20 A. (Lobdell) The ratio -- well, considering just the 620  
21 acre wetland mitigation parcel is 46 to 1. If we add  
22 in the high elevation mitigation, which also has  
23 wetlands and buffering, it comes out to 161 to 1.

24 MS. GEIGER: Thank you. I have no  
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1 further questions.

2 CHAIRMAN GETZ: Thank you. Anything  
3 further from the Subcommittee?

4 MR. IACOPI NO: Mr. Chairman, I don't  
5 know if this is a question that should be directed to  
6 counsel or to the witness. But, at the beginning of the  
7 redirect, there was reference to "Appendix 17", the  
8 Stantec letter. And, it was referenced as being a  
9 response to the New Hampshire Natural Heritage Bureau.  
10 But it appears to be addressed to "Pip Decker". Is there  
11 any indication that this was, in fact, sent to the Natural  
12 Heritage Bureau?

13 MS. GEIGER: We believe it was,  
14 Mr. Iacopino. But I need to -- I need to look at what's  
15 behind it. Subject to check, we need to confirm with  
16 Stantec that it was, in fact, sent, but we believe it was.  
17 We can get you that information tomorrow.

18 MR. IACOPI NO: Thank you.

19 CHAIRMAN GETZ: Okay. Anything else --

20 MR. IACOPI NO: Not tomorrow.

21 MS. GEIGER: Oh. Friday.

22 CHAIRMAN GETZ: -- for the panel?

23 (No verbal response)

24 CHAIRMAN GETZ: Okay. Hearing nothing,

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1 then the panel is excused. Thank you, gentlemen.

2 WITNESS LaFRANCE: Thank you.

3 MS. LINOWES: Mr. Chairman, I understand  
4 that you would like me to go today. I'd like to indulge  
5 or request that, since it's so late in the day, that I be

6 put off until Friday. I realize only 15 minutes is asked  
7 of me, but the sense that it's going to be rushed just to  
8 get me done is -- just get my time done with is a little  
9 uncomfortable to me. And, if you would allow me to go on  
10 Friday, I would appreciate it.

11 CHAIRMAN GETZ: Well, actually, I think  
12 we've got too much to do in too short of time. We're  
13 going to -- we'll be here as long as it takes. And,  
14 apparently, as I indicated prior to the break, that we  
15 would be hearing your testimony tonight. The attorneys  
16 for Fish & Game and AMC have left. So, I take that as  
17 indication that they didn't have any cross-examination.  
18 Mr. Roth, do have cross-examination for Ms. Linowes?

19 MR. ROTH: No, I don't.

20 CHAIRMAN GETZ: And, the Applicant has  
21 indicated that they have 15 minutes. So, we're going to  
22 move ahead. So, if you could please take the stand.  
23 Well, just off the record for a second.

24 (Brief off-the-record discussion  
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1 ensued.)

2 CHAIRMAN GETZ: So, let's get back on  
3 the record.

4 (Whereupon Lisa Linowes was duly sworn  
5 and cautioned by the Court Reporter.)

6 MR. IACOPI NO: Is there a copy of your  
7 direct testimony up here?

8 WITNESS LINOWES: I have it right here.  
9 I was going to use it and then give it back.

10 LISA LINOWES, SWORN

11

12 BY MR. IACOPI NO:

13 Q. Okay. Ms. Linowes, I put in front of you what's been  
14 marked as "IWA-1". Do you recognize that document?

15 A. I do.

16 Q. Do you recognize that to be your prefiled direct  
17 testimony in this matter?

18 A. It is.

19 Q. And, if you were to be asked to testify on direct  
20 today, would your testimony be substantially in  
21 conformance with what is contained in that document?

22 A. Yes, it would be.

23 Q. Would you give the same answers that you've written  
24 down there?

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1 A. Yes.

2 Q. Are there any changes or updates you wish to make to  
3 that?

4 A. I have several, a couple of minor changes.

5 Q. Okay. Why don't you tell the Committee what your  
6 changes are.

7 A. This would be on Page 1 -- I'm sorry, it's on Page 3,  
8 Page 3 of the testimony. First question, the answer  
9 says "Windaction.org subscribers number close to  
10 1,700", and it's now over 1,800. It should read "over  
11 1,800". On Page 5, I had a typographical error on Line  
12 22. That should read: "In the conclusion of the  
13 conclusion of the 2006 radar survey report", I have  
14 "2005". Back on Page 4, there is, on Line 13, that  
15 word should read "drawn", and not "draw". On Page 6,

16 at the end of Line 11 that should be a comma, not a  
17 semi colon. And, on Page 9, Line 5, the first sentence  
18 should read: "In reviewing Stantec's preconstruction  
19 studies of daytime and nighttime migrants". So, the  
20 word "the" should be removed and the word "of", between  
21 "studies" and "daytime" should be added. And, that's  
22 it.

23 Q. Are those all the updates or corrections to your direct  
24 testimony that you have?

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1 A. Yes, it is. Thank you.

2 MR. IACOPI NO: She's ready for  
3 cross-examination, sir.

4 CHAIRMAN GETZ: Thank you. Mr. Patch.

5 MR. PATCH: Okay. Thank you.

6 CROSS-EXAMINATION

7 BY MR. PATCH:

8 Q. Ms. Linowes, I know you've revised this number, but you  
9 had indicated that your group now has close to over  
10 1,800 subscribers, apparently. Could you tell us what  
11 you mean by "subscribers"?

12 A. Yes. It's --

13 MR. ROTH: Mr. Chairman, I'd like to  
14 object to this line of questioning. Ms. Linowes and her  
15 organization have already been allowed to intervene in  
16 this process. And, it seems to me that the line of  
17 questioning is designed to either obtain information that  
18 they're really not entitled to and that's not relevant to  
19 this proceeding, or they're trying to object to her right  
20 to intervene. And, the Committee has already ruled on her

21 right to intervene, and I don't see the point of going  
22 through this line of questioning.

23 CHAIRMAN GETZ: Mr. Patch.

24 MR. PATCH: I just think it's important  
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1 to clarify on the record some of the information.  
2 Obviously, I'm not objecting to her intervention. That's  
3 already been granted by the Committee.

4 CHAIRMAN GETZ: Well, yes, I think, from  
5 my perspective, it seems like you're getting ahead of  
6 yourself, Mr. Roach -- Roth, on where they might be  
7 headed. But I think it's fair to ask what is meant by  
8 "subscribers" here.

9 MR. ROTH: I heard the questions before  
10 at a technical session, so I know where he's going with  
11 it.

12 CHAIRMAN GETZ: Well, the objection is  
13 overruled. Let's find out what "subscribers" means.

14 BY THE WITNESS:

15 A. We are not a membership organization. So, people  
16 subscribe and seek regular updates of information that  
17 we put out, including a weekly newsletter.

18 BY MR. PATCH:

19 Q. And, by subscribing, do they sign up online or they  
20 send you a letter or what does it mean?

21 A. They sign up online, through the website.

22 Q. And, how many of them reside in New Hampshire?

23 A. I don't know.

24 Q. I think you had indicated that some number of those  
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- 1 that reside in New England, did you not?
- 2 A. Yes.
- 3 Q. So, you have a breakdown by region, but not by state?
- 4 A. The organization, when it was first formed, although it
- 5 is national in nature, and we do cover -- track wind
- 6 energy development in other countries where there are
- 7 hot spots, it is -- was largely New England-based.
- 8 Q. On Page 3 of your prefiled testimony, you say you "do
- 9 not oppose wind energy", is that correct?
- 10 A. That's correct.
- 11 Q. Could you tell us the wind projects that you have
- 12 supported?
- 13 A. That I've supported?
- 14 Q. Yes.
- 15 A. Well, I haven't been asked whether I support any
- 16 particular project. I was an intervenor in -- with the
- 17 Deerfield Project in Vermont. My -- The organization's
- 18 intent -- now, are you asking me personally or the
- 19 project -- or, the organization?
- 20 Q. Actually, both ways would be interesting to hear.
- 21 A. Well, the purpose of the organization is to disseminate
- 22 information over possible impacts associated with
- 23 industrial wind development because of where it's
- 24 located. And, so, we don't particularly take a
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- 1 position on wind energy, nor do we go out and advocate
- 2 for wind energy in any one area over another. Our
- 3 purpose, as what I'm trying to do as part of this
- 4 process, is to raise awareness as to what the impacts

5 might be, which might not otherwise come through from a  
6 developer's perspective.

7 Q. Would you say that you were opposed to the Deerfield  
8 Project?

9 A. That was a project that was in National Forest land.  
10 And, so, public land. So, there were specific concerns  
11 about the industrialization of public lands. So, from  
12 that perspective, there were a lot of concerns.

13 Q. So, is the answer "yes" then?

14 A. I was opposed to it, yes.

15 Q. And, what about this Project?

16 A. This Project also has some issues. And, we're clearly  
17 seeing that. I don't really have -- well, when we went  
18 through discussions of possible mitigation, there were  
19 ideas that were put forth that suggested that the  
20 impacts could be substantially reduced if certain steps  
21 were taken, which are not part of the Mitigation Plan  
22 that's been signed. And, so, that's what I was looking  
23 for and evaluating. To say that I was flat out opposed  
24 to the Project would be an inaccurate statement.

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1 Q. In your testimony, you comment at some length on avian  
2 studies and surveys. Is that fair so say?

3 A. Yes.

4 Q. Are you a certified wildlife biologist?

5 A. I am not.

6 Q. Are you a professional wetland scientist?

7 A. No.

8 Q. Are you a licensed forester?

9 A. I am not.

- 10 Q. Have you been certified by the Society of American  
11 Foresters?
- 12 A. No.
- 13 Q. Do you have a degree in Forestry Management or Forestry  
14 and Wildlife Management?
- 15 A. No.
- 16 Q. Have you ever conducted an avian radar survey?
- 17 A. Well, let me clarify where I'm coming from on that.  
18 This testimony represents the collective understanding  
19 of the organization. And, I'm not the only person who  
20 is part of that organization. So, I work very closely  
21 with wildlife biologists that have done exactly those  
22 radar studies, have conducted post-construction  
23 surveys. And, I could tell you, I have a very good  
24 knowledge of the processes involved.

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- 1 Q. Okay. But have you ever conducted an avian radar  
2 survey?
- 3 A. No.
- 4 Q. Have you ever conducted a raptor survey?
- 5 A. I have not.
- 6 Q. How about a breeding bird survey?
- 7 A. I have not. I didn't comment on breeding bird surveys  
8 in this testimony.
- 9 Q. But you have no particular qualifications to do that,  
10 do you?
- 11 A. I do not.
- 12 Q. In your testimony, you also comment in some detail on  
13 noise issues.
- 14 A. Yes.

15 Q. Is that fair to say?

16 A. That's correct.

17 Q. Do you have a degree in Mechanical Engineering?

18 A. I've spent a substantial amount of time working with

19 noise experts as pertains to wind energy facilities.

20 And, I have an Engineering degree by training. And, I

21 have an analytical understanding of what's going on

22 with noise.

23 Q. I thought you had a degree in Software?

24 A. Well, that's an engineering degree.

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1 Q. Oh. Okay.

2 A. At the time, when I received my Engineering degree, it

3 was an Engineering degree.

4 Q. So, it was from a school of engineering?

5 A. Rochester Institute of Technology.

6 Q. Are you a member of the Institute of Noise Control

7 Engineering?

8 A. The two noise experts that I work with very closely

9 are.

10 Q. Okay. Are they here today or did they --

11 A. They are not.

12 Q. They didn't prepare your testimony, did they?

13 A. They worked with me on it. Well, I shouldn't say that.

14 They did not help write it. I worked -- I asked them

15 questions and understood what I needed to write.

16 Q. Do you have any experience in the acoustical design and  
17 evaluation of power generation facilities?

18 A. The acoustical design and --

19 Q. And evaluation of power generation facilities. That's

20 what Mr. Hessler has.

21 A. For noise analysis?

22 Q. Yes.

23 A. I do not.

24 Q. On Page 9 of your prefiled testimony, you refer to  
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1 "forest fragmentation".

2 A. Correct.

3 Q. But you also indicate that you defer to Fish & Game on  
4 this. Is that fair to say?

5 A. Are you referring -- which section are you talking  
6 about?

7 Q. Page 9.

8 A. Right. I refer to that --

9 Q. Line 10.

10 A. Oh, to New Hampshire Fish & Game. Yes. The testimony  
11 that was filed by Fish & Game covered the issues  
12 pertaining to forest fragmentation quite effectively.

13 Q. And, so, in light of the fact that Fish & Game has now  
14 signed the Settlement Agreement, does that mean that  
15 you continue to defer to Fish & Game on this issue?

16 A. It does not invalidate the testimony that was filed in  
17 December.

18 Q. So, I guess your deference to them is no longer there,  
19 is that fair to say?

20 A. I think there was a lot of other thinking that went  
21 into why that Mitigation Plan was signed. And, I hope  
22 to explore that with Will Staats and Jillian on Friday.

23 Q. I think it was also on Page 9, you refer to  
24 "fragmentation". Hasn't there already been

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- 1 fragmentation in the area where this Project is  
2 supposed to be build, from logging activities and  
3 associated roads, over a long period of time?
- 4 A. Not to the extent of what's being discussed here. It's  
5 rare to find a log -- I don't think you'll ever find a  
6 logging road that's 34 feet in width, that has  
7 extensions of infrastructure and drainage that could  
8 potential go 150 feet or better. What you see up  
9 there, when the Applicant discusses 19 miles of  
10 pre-existing roads, I think we've all been on timber  
11 roads, and we know roads that have been cut and used  
12 once in a ten-year period, and those which are there to  
13 be permanent and to carry heavy structures. So, the  
14 fragmentation that exists today has largely been  
15 repaired in a lot of those miles of existing roads.  
16 That's not what's being discussed today in this  
17 Project.
- 18 Q. Isn't there fragmentation from clear-cutting?
- 19 A. There is fragmentation from clear-cutting.
- 20 Q. So, you'd admit that there has been fragmentation up  
21 there, and there probably will continue to be  
22 fragmentation, irregardless of whether the Project is  
23 built up there?
- 24 A. Not the level of fragmentation that we're talking about  
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- 1 here, no. I disagree.
- 2 Q. So, you think -- you think clear-cutting is less

3 fragmentation?  
4 A. Clear-cutting, I mean, I own a parcel of land that's  
5 been clear-cut, prior to my owning it. And, it comes  
6 back very quickly. And, so, we're not -- in a period  
7 of ten years, it's largely covered in green. We're not  
8 talking about the types of vegetation ever coming back  
9 potentially in these areas. And, by the way, there was  
10 the discussion of who's -- people driving on those  
11 roads, perhaps they can gate them to a point, but these  
12 wind energy projects, once those roads get put in, get  
13 significant ATV activity, and others. So, to suggest  
14 that the public will stay out while there's a road  
15 improved, to the extent that it will be, is not factual  
16 or based in experience.

17 Q. Okay. Well, that's a little beyond fragmentation,  
18 isn't it?

19 A. Well, you said --

20 Q. I mean, you're talking now about "road access". I  
21 didn't ask you about "road access"?

22 A. That's true.

23 MR. PATCH: I have no further questions.

24 CHAIRMAN GETZ: Questions from the  
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1 Subcommittee? Mr. Harrington.

2 MR. HARRINGTON: Yes. Well, I guess  
3 it's "good evening" now, right? Yes. A couple of  
4 questions on your testimony.

5 BY MR. HARRINGTON:

6 Q. Starting on Page 9, where it says "Moving on to the  
7 project's purpose, do you have any comments on

8 generation from wind?" And, continuing through the  
9 next three or four pages, you have various statements,  
10 you quote various sources. And, I guess, in  
11 summarizing this, I'd say you're trying to show that  
12 wind power isn't really as valuable as other sources of  
13 generation?

14 A. That's true.

15 Q. Is that correct? Okay. And, having agreed with that  
16 assessment then, what do you attribute the fact that  
17 states like New Hampshire have renewable energy goals  
18 that include wind, there's a national movement to get  
19 more wind power, there's bills in front of the Senate  
20 right now that would have the cost of billions of  
21 dollars of cost maybe for transmission socialized or  
22 regionalized across very large areas to just promote  
23 more wind development. So, why is it that, it seems  
24 like everybody's in favor of wind here, and you're

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1 saying "it's not very good." I mean, do you care to  
2 comment on that?

3 A. Yes. I think one of the biggest issues that we have  
4 with the RPS Programs that are in place and the  
5 Production Tax Credit which is in place, at time that  
6 they were being evaluated and proposed, it was largely  
7 focused on adding renewable generation on the grid.  
8 And, they are energy-based policies, they are not  
9 capacity-based policies. It was perceived, and, you  
10 know, and largely the people walking the street today  
11 believe that one -- any renewable energy that we could  
12 put on the grid is a good thing. People that are in

13 the utility business and energy business argue that the  
14 -- it's really the time of day and time of year where  
15 the production can come where it's going to make a  
16 difference.

17 When we are arguing that New England has  
18 a -- has significant energy needs, and they're growing,  
19 I don't know what they are today, but they have been  
20 growing at one and a half to two percent per year,  
21 we're not talking about the middle of the night in the  
22 middle of winter. We're not talking about when our  
23 capacity is at 11,000 -- or, rather, our load is 11,  
24 12, 15,000 megawatts. We're talking in the middle of  
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1 the summer, at 2:00, when our capacities -- or, our  
2 needs or loads reaches 28,000 plus megawatts. We have  
3 a substantial amount of capacity today on the grid to  
4 meet our needs when the wind typically blows.

5 Q. Okay. Oh, excuse me.

6 A. So, that's where I'm going with that.

7 Q. So, I guess, from a point of public policy though, you  
8 mentioned the Tax Credits on the federal level, the  
9 Production Tax Credits for wind, the Renewable  
10 Portfolio Standards for New Hampshire, which includes  
11 wind energy, qualify for that. So, I guess your  
12 position is that that -- those public policies is  
13 incorrect in giving special treatment to wind and  
14 promoting wind energy?

15 A. Well, at the time when those policies were put in  
16 place, bearing in mind the Production Tax Credit dates  
17 back to 1992, when they were trying to beef up what was

18 perceived as a --

19 Q. Excuse me, though, it was just re-upped within the  
20 matter of the last few months.

21 A. Right. But the original policy, the original PTC went  
22 in place in 1992, and has been "re-upped", if you will,  
23 fairly continuously since that time. The focus was on  
24 renewable energy. And, there was -- there was, and

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1 there continues to be, no intent to differentiate  
2 between different renewable sources. Biomass and wind  
3 are two different beasts. Biomass and hydroelectric  
4 and wind are very different things. And, when you are  
5 -- when we are evaluating the impacts and the ability  
6 of an energy source to meet our needs, we're reaching a  
7 time when we're spending billions of dollars and  
8 talking about building a transmission line that's  
9 national in nature, and turning the midsection of this  
10 country into a gigantic wind power facility, it's time  
11 that we step back and understand what the -- what the  
12 country's needs are for energy and whether wind can  
13 meet it. And, what -- that point that I was raising  
14 with regard to the "20 percent wind power by 2030",  
15 where it says "wind is an energy resource", not a  
16 "capacity resource". If we're at a point where we're  
17 building that much wind, and we still cannot  
18 decommission an existing power plant and get it  
19 replaced by wind, or negate the need to build  
20 additional resources, then we have an issue in energy  
21 policy, and whether wind is able to meet our needs.  
22 That's all.

23 Q. In short, I guess you'd say that you have a different  
24 opinion from what the state and federal government have  
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1 put into law?

2 A. I don't think my opinion is unique. And, I think that  
3 you're going to be hearing more of what I've been  
4 saying.

5 Q. Okay. Let's get onto the capacity issue, because  
6 you've mentioned that a couple of times. And, of  
7 course, there is a difference between "capacity" and  
8 "energy". But are you familiar with the term  
9 "Installed Capacity Requirement", "ICR"?

10 A. Installed -- I know what "installed capacity" is. I  
11 don't know --

12 Q. Installed Capacity Requirement.

13 A. "Installed Capacity Requirement", I don't, I'm sorry.

14 Q. It's an amount that's specified every year by ISO-New  
15 England looking forward as to the amount of installed  
16 capacity the region is going to need.

17 A. Oh. Yes.

18 Q. And, as we -- we spoke about in earlier testimony that  
19 there's what's called a "Forward Capacity Auction", and  
20 different projects, different resources get qualified  
21 for that.

22 A. Right.

23 Q. Now, you stated that "wind has very limited", I think  
24 in some cases, "no or very limited capacity value"?

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1 A. Correct.

2 Q. But it was stated earlier here that this Project has  
3 qualified in the ISO Forward Capacity Market for  
4 29.9 megawatts of capacity in the summer and 42.9 in  
5 the winter. So, how do you explain the fact that the  
6 ISO is saying, as part of their installed capacity  
7 requirement, they are going to count on this plant, if  
8 indeed it gets built, to produce 29.9 megawatts of that  
9 needed installed capacity? Are they making a mistake  
10 by doing that?

11 A. Well, I don't know how they came up with the  
12 29 percent. And, I don't know if that will be  
13 re-evaluated --

14 Q. Excuse me, it was 29.9 megawatts, not a percent.

15 A. Oh, megawatts. Okay. I don't know if that number gets  
16 re-evaluated up or down over the course. My  
17 understanding, with intermittent resources, that a  
18 number is selected in the beginning, and then over --  
19 then history, after a project has been running, those  
20 numbers get adjusted, up or down. And, wind, I don't  
21 know, my estimate is that it would get -- it will be  
22 put down further. I don't know why the ISO starts out  
23 that high. I don't know -- I don't know if they look  
24 at the wind data, I don't know where they get that

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1 information.

2 When we went through the scenario  
3 planning process with the ISO a couple of years ago,  
4 they had given wind -- started wind out at 20 percent  
5 as -- for planning purposes. And, at the time, I was  
6 very surprised they would start out even that high.

7 MR. HARRINGTON: Well, they base it on  
8 the submittals made by the Applicant, and they have to go  
9 through a qualification process. So, in the ISO's  
10 opinion, this is their best guess as to what the plant  
11 will be able to deliver in the form of capacity. So, at  
12 least what they're saying is there is some substantial  
13 capacity value to the Project. So, that's all the  
14 questions I have.

15 CHAIRMAN GETZ: Other --

16 MR. HARRINGTON: I'm sorry, I did have  
17 one other question. Sorry.

18 BY MR. HARRINGTON:

19 Q. On the noise issue, on Page 13, on Question 18, there  
20 was a question about "pertaining to the assumptions  
21 made in the noise study". And, you disagree with the  
22 statements that were made having to do with the  
23 background noise, I guess to summarize it, was that you  
24 might not have this background noise present at lower

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1 level, where the wind would still be blowing at the  
2 higher level of the turbine?

3 A. Yes.

4 Q. Okay. And, in this particular case, in this Project,  
5 let's assume that the background noise was off by  
6 100 percent, it was only half of what they stated it  
7 was going to be at the lower levels. Would there still  
8 be anybody that would be bothered by these projects  
9 running at night? And, if so, could you give us a  
10 specific location as to a residency that would be  
11 affected by the noise?

12 A. Well, the specific point I was making there is that, in  
13 Mars Hill, Maine, the problem is significant, the noise  
14 is significant, when the winds aloft are high and the  
15 winds down below are significant. So, you get all the  
16 turbine noise. I don't know. There are people in  
17 Searsburg, Vermont have testified before their Public  
18 Service Board that they live two miles away and they  
19 hear those turbines. Those are much smaller turbines.  
20 I can't qualify the noise versus these. Their closest  
21 residence my understanding is somewhere around two and  
22 a half, maybe 2.9 miles. They're in an area where the  
23 background noise level at the dead of night, we're  
24 probably in the 22, 21 decibel range, where it's so  
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1 quiet you could hear the snow fall. They may well hear  
2 this noise. Will it bother them? Probably, because  
3 they're used to the quiet. Well, it cause -- Well, it  
4 won't probably -- it won't keep them up at night, not;  
5 like it does in Mars Hill, but they will hear it --  
6 there is a possibility they will hear these turbines.  
7 Q. But you're not basing that on any studies or analysis  
8 that anybody has done that assumes that. This is just  
9 an assumption on your part?  
10 A. Based on the experience of others that live a couple  
11 miles away from turbines, they do hear them.

12 MR. HARRINGTON: Thank you.

13 CHAIRMAN GETZ: Mr. Scott.

14 DIR. SCOTT: Good evening, Ms. Linowes.

15 WITNESS LINOWES: Hi.

16 DIR. SCOTT: Nice to see you again.

17 BY DIR. SCOTT:

18 Q. Just for clarification, are you representing yourself  
19 or the two organizations that are listed on Page 1 of  
20 your --

21 A. Only the one organization. I'm no longer affiliated  
22 with that other organization.

23 Q. Oh, you were just the founder of that organization.  
24 So, you are an employee of the Wind Action group or  
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1 just representing them or --

2 A. Well, I mean, it would be disingenuous to suggest that  
3 we are, you know, with a major staff. I'm here by my  
4 myself. But the organization is loosely defined. I'm  
5 Executive Director. We have -- I work closely with  
6 people around the country. But it's not like AMC or  
7 the Nature Conservancy.

8 Q. Perhaps you do get reimbursed for your time here, is  
9 that a fair statement?

10 A. I'm probably one of the few unpaid people in the room.

11 DIR. SCOTT: Well, that's very laudable.

12 So, thank you.

13 CHAIRMAN GETZ: Any other questions?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. Well, normally,  
16 this would be an opportunity for redirect, which is a  
17 little difficult in terms of pro se. I would give you the  
18 opportunity to respond to any of the questions that were  
19 asked on cross, but also suggesting that you are going to  
20 have -- this is not the opportunity for closing statements  
21 in general, because you're going to have that opportunity.

22 But is there --

23 MR. ROTH: Mr. Chairman?

24 CHAIRMAN GETZ: -- any particular

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1 questions that were raised that you would like to respond  
2 to? And, Mr. Roth, are you offering to provide some  
3 assistance in this regard?

4 MR. ROTH: I could assist in asking a  
5 redirect question for her or I could consult with her and  
6 see if there's some areas she wants to redirect. There is  
7 one area that I would try.

8 CHAIRMAN GETZ: Okay. Well, let's take  
9 a couple of minutes, if you would like to accept the offer  
10 from counsel for the Public?

11 WITNESS LINOWES: Sure.

12 MR. ROTH: Since she is one of my  
13 clients.

14 CHAIRMAN GETZ: As are we all,  
15 apparently.

16 MR. ROTH: Yes.

17 CHAIRMAN GETZ: Okay. Let's take a  
18 couple of minutes.

19 MR. ROTH: So is Doug.

20 CHAIRMAN GETZ: Off the record.

21 (Whereupon a recess was taken at 6:45  
22 p.m. and the hearing reconvened at 6:51  
23 p.m.)

24 CHAIRMAN GETZ: Okay. We're back on the

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1 record. And, opportunity for redirect, Mr. Roth.

2 MR. ROTH: Thank you. I have just a  
3 couple of questions for Ms. Li nowes.

4 REDIRECT EXAMINATION

5 BY MR. ROTH:

6 Q. During your cross-examination you were asked a number  
7 of questions about your organization. Can you give  
8 some more information about the structure of your  
9 organization and its leadership and direction?

10 A. Yes, Mr. Roth. Thank you. We are a corporation,  
11 incorporated in the State of New Hampshire. The  
12 organization has a Board of Directors. I am the  
13 Executive Director. So, I am the voice of the  
14 organization, but by no means am I the only person as  
15 part of the organization. And, so, the -- we do have  
16 an Advisory Board. When I have mentioned that I have  
17 "access to people", we have an Advisory Board composed  
18 of energy experts, people that are wildlife biologists,  
19 noise experts, and others, in the particular topic  
20 areas that are areas of concern as they relate to wind  
21 energy development.

22 Q. Thank you. And, during your cross-examination, there  
23 was a number of questions that were asked of you about  
24 whether you had various licenses or degrees. And, a

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1 question was asked whether you had qualification --  
2 whether you had any qualifications to do so, and I  
3 think there was some ambiguity about whether you were  
4 -- the question was directed at your ability to render

5 an opinion about breeding birds or about any of this.  
6 And, so, could you give a clearer indication about what  
7 you think your qualifications are to make the testimony  
8 that you did and appear in this proceeding?

9 A. Yes, Mr. Roth. The organization was founded in 2006.  
10 I've been involved in wind energy development and  
11 tracking of it since 2004. At that time, there was  
12 very little information pertaining to the impacts of  
13 wind. It was a renewable, it was -- you know. In any  
14 event, in large measure, much of the information that's  
15 come forward, in terms of radar studies, daytime  
16 tracking of raptors, the issues of bat kills, and all  
17 of the research that's associated with it, as we heard  
18 from Mr. Pelletier, that information is very new. And,  
19 I was tracking it closely with wildlife biologists as  
20 it was happening. The question of the PTC, the  
21 Renewable Portfolio Standards, the desire to see more  
22 renewables and the impacts of wind, I'm right there,  
23 because these are questions and policy issues that are  
24 within the last couple of years. So, my understanding

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1 -- and as well as noise. My understanding of wind  
2 energy issues, as it relates to the environment, as it  
3 relates to impact on humans, as it relates to energy  
4 policy, is as current and as accurate as you can get.  
5 And, it's by virtue of the fact that I spend every hour  
6 of my life working with it and working with people that  
7 are involved with it.

8 MR. ROTH: That's all.

9 CHAIRMAN GETZ: Okay. Is there anything

10 further for Ms. Linowes?

11 MR. PATCH: Could I ask one follow-up  
12 question?

13 BY MR. PATCH:

14 Q. The identity of the wildlife biologist --

15 MR. ROTH: Mr. Chairman, aren't you  
16 going to have to make him work for it?

17 CHAIRMAN GETZ: Well, it's got to be  
18 related to the questions. There were only two areas on  
19 redirect.

20 MR. PATCH: Yes. And, it's related to  
21 -- she just said that she consulted with wildlife  
22 biologists.

23 BY MR. PATCH:

24 Q. And, I guess I'd like to ask, is Vern Lang one of those  
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1 wildlife biologists?

2 A. He's not on our Advisory, no. I have -- With regard to  
3 bat issues, I have consulted with Dr. Koontz, who is  
4 world renowned for bat expert -- bat knowledge. I've  
5 spoken with Ed Arnette, that was mentioned --

6 Q. I mean, so, the answer to my question is "no"?

7 A. My consultation with Mr. Lang had to do specifically  
8 with what was Fish & Wildlife Service's concerns about  
9 this Project. But it wasn't about in general.

10 MR. PATCH: Okay. Thank you.

11 CHAIRMAN GETZ: Anything further?

12 (No verbal response)

13 CHAIRMAN GETZ: Hearing nothing, then  
14 you're excused. Thank you, Ms. Linowes. Thank you,

15 everyone, for hanging in there.

16 I guess my intention is to resume  
17 Friday, at 10:00 a.m. And, I know we've all had to be  
18 flexible throughout this process, but I think what I would  
19 like to do on Friday is start with Ms. Keene, and get her  
20 direct testimony and cross-examination. And, then, I  
21 think, logically then we would turn to the  
22 Lyons/Pelletier/Gravel panel, to allow cross-examination  
23 regarding the Mitigation Plan. And, then go to Staats and  
24 Kelly, and then Dr. Publicover. And, I don't know if

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1 there's any real hope of reaching Mariani and Sanford on  
2 Friday. But are they available, in the event we are  
3 moving rapidly on Friday?

4 MR. ROTH: Yes, they are. And, I was  
5 going to ask whether I can ask them to not have to appear  
6 until after lunch.

7 CHAIRMAN GETZ: I think that would be  
8 very -- based on past performance, which is, as an  
9 indicator in this case, I would say that would be fair to  
10 do.

11 MR. ROTH: Okay. Thank you.

12 CHAIRMAN GETZ: Okay. Anything else,  
13 before we recess for the day?

14 MR. ROTH: Well. Mr. Chairman, if I  
15 might. I mean, they do travel from Massachusetts. And,  
16 they -- if it seems unlikely they're going to be heard at  
17 all on Friday, I would just as soon they stayed home. I  
18 think they would prefer it as well.

19 CHAIRMAN GETZ: Well, and that's why I'm

20 having a little trouble judging this. Because, you know,  
21 the substance of what we're going to be talking about is  
22 the Mitigation Plan and the high altitude habitat issues.  
23 And, it's -- I mean, do you have any indication of how  
24 much cross-examination you're going to be doing during the  
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1 day?

2 MR. ROTH: Of -- No, I don't imagine a  
3 lot of cross-examination on the High Elevation Mitigation  
4 Plan. I have a few questions about, you know, the  
5 mechanics of it, the implementation, some of the terms of  
6 the Agreement, but I don't plan to do a cross-examination  
7 on high elevation issues.

8 CHAIRMAN GETZ: Well, maybe the way to  
9 proceed is maybe I'd ask Mr. Iacopino tomorrow to make  
10 some phone calls to the parties to get a better feel.  
11 And, again, it's probably not going to be conclusive, but  
12 --

13 MR. IACOPI NO: Hasn't been yet.

14 CHAIRMAN GETZ: But maybe we'll have an  
15 idea and maybe we can make an arrangement on that. I  
16 don't think I can be any more definitive than that at this  
17 point. Because some of this is driven by how much time  
18 we're going to have next Monday and Tuesday. Does anyone  
19 have a feel for how much, are we going to need both days  
20 for the financial issues?

21 MR. ROTH: I don't think so.

22 MR. PATCH: I don't think so either. I  
23 would think we could do that in one day, but --

24 MR. ROTH: Or less even.

1 CHAIRMAN GETZ: Well, if that's the  
2 case, then we have Tuesday next week for Mariani and  
3 Sanford, if we're not going to go more than a day on the  
4 financial issues.

5 MR. PATCH: I mean, as an example, with  
6 Ms. Keene, we have very few, if any, questions of her, and  
7 I don't know if others have many questions of her. So, I  
8 don't think that will take very long. We have Mr.  
9 Publicover, I think I had indicated 15 minutes, you know.  
10 So, we certainly don't have that many questions. And,  
11 with Staats and Kelly, we'd probably --

12 MS. GEIGER: Not very much.

13 MR. PATCH: Not many at all. So, on  
14 Friday, it may go -- it really depends, I guess, on how  
15 much cross people have of the panel that we still have  
16 remaining. Because I would think we could get to Mariani  
17 in the afternoon, but probably depends on the others.

18 CHAIRMAN GETZ: Okay. And, Ms. Linowes,  
19 I'm taking it that you're probably going to have a fair  
20 number of questions for all of Publicover, Staats/Kelly,  
21 and the Lyons/Pelletier/Gravel regarding the Mitigation  
22 Plan, is that true?

23 MS. LINOWES: That's true. I want to  
24 explore that.

1 CHAIRMAN GETZ: So, one, two, three  
2 hours total for all of them?

3 MS. LINOWES: I can't imagine I'd have  
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4 the energy for three hours. Maybe an hour and 15.  
5 Honestly, Mr. Chairman, I don't know yet.

6 CHAIRMAN GETZ: Okay. Well, I'll go  
7 back to what I said earlier. Maybe I'll try to get a  
8 better viewpoint from counsel, if he can reach out to  
9 others who aren't here. And, then, hopefully, Mr. Roth,  
10 we'll be able to tell you something more clearly about  
11 Mariani and Sanford. But it seems to me, right now, I'd  
12 like to try and push through, if we can do that. But  
13 we'll await further information. Anything else?

14 (No verbal response)

15 CHAIRMAN GETZ: Hearing nothing, then  
16 I'll recess for the day. Thank you, everyone.

17 (Whereupon the hearing was adjourned at  
18 7:00 p.m. and the hearing to resume on  
19 March 13, 2009, to commence at 10:00  
20 a.m.)

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