

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3  
4 March 19, 2009 - 12:07 p.m.  
5 N. H. Fish & Game Department  
629B Main Street DAY 7  
Lancaster, New Hampshire

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

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

23 \* \* \*

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

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

1  
2 APPEARANCES:

3 Reptg. Granite Reliable Power, LLC,  
4 and Noble Environmental Power:  
Douglas L. Patch, Esq. (Orr & Reno)  
Susan S. Geiger, Esq. (Orr & Reno)  
Page 1

GRP-DAY7.txt

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Reptg. Counsel for the Public:  
Peter C. L. Roth, Esq.  
Senior Assistant Atty. General  
New Hampshire Dept. of Justice

Reptg. the Appalachian Mountain Club:  
Kenneth Kimball

Reptg. Industrial Wind Action Group:  
Lisa Linowes

{SEC 2008-04} [Day 7] {03-19-09}

3

1

2

## I N D E X

3

PAGE NO.

4

WITNESS: TREVOR LLOYD-EVANS

5

Direct examination by Mr. Roth 11

6

Cross-examination by Ms. Linowes 12

7

Cross-examination by Ms. Geiger 20

8

Cross-examination by Mr. Iacopino 44

9

Redirect examination by Mr. Roth 48

10 GRP-DAY7.txt  
Recross-examination by Ms. Geiger 53

11

12 QUESTIONS FROM SUBCOMMITTEE MEMBERS BY:

13 Dir. Scott 30, 42

14 Dr. Kent 32

15 Mr. Harrington 35, 40, 45

16 Dir. Normandeau 37

17

18

19

20

21

22

23

24

{SEC 2008-04} [Day 7] {03-19-09}

4

1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good afternoon,  
3 everyone. We're going to reopen the hearing in Site  
4 Evaluation Committee Docket 2008-04, concerning the  
5 Application of Granite Reliable Wind Power. Let me note  
6 for the record that all seven members of the Subcommittee  
7 are present. And, let's also take appearances from the  
8 parties.

9 MR. PATCH: Good afternoon, Mr.  
10 Chairman, members of the Committee. Doug Patch and Susan  
11 Geiger, for the Applicant.

12 CHAIRMAN GETZ: Good afternoon.

13 MR. ROTH: Good afternoon, Mr. Chairman.  
14 Peter Roth, Counsel for the Public. And, today

15 accompanying me is the witness, Mr. Trevor Lloyd-Evans.

16 CHAIRMAN GETZ: Okay. Good afternoon.

17 Mr. Kimball, would you like to note the appearance of AMC?

18 MR. KIMBALL: Yes. Kenneth Kimball,  
19 from the Appalachian Mountain Club.

20 CHAIRMAN GETZ: Okay. Thank you.

21 MR. ROTH: And, just for your  
22 information, I do expect Evan Mulholland, from the Fish &  
23 Game, to be here at some point.

24 CHAIRMAN GETZ: Okay. Thank you. Then,  
{SEC 2008-04} [Day 7] {03-19-09}

5

1 is there anything that we need to address before we hear  
2 your direct examination Mr. Trevor --

3 MR. ROTH: Yes, there are two, I guess  
4 two procedural or housekeeping issues, for want of a  
5 better description. The first one being, you had asked us  
6 for us to identify any documents that we believe should  
7 not be included in the record. And, I have on record  
8 already a motion objecting to I believe it was exhibit to  
9 the -- going out on a limb here, 56.

10 CHAIRMAN GETZ: That is the Gittell  
11 economic development report?

12 MR. ROTH: That's correct. And, I'd  
13 also -- I would object to one other document, and that  
14 document would be, in fact, the Application itself. The  
15 Application was signed by the Company's president, and I  
16 don't believe was ever sponsored by any of the witnesses  
17 in this case. Now, and that could -- you know, somebody  
18 could make a liar out of me and point to testimony on the  
19 record, but I don't believe any of the prefiled testimony

20 adopts the Application document itself in full. And, now,  
21 while I understand that the Application itself is a  
22 document of record in the proceedings, that begins the  
23 proceeding, but the Application itself is also full of  
24 factual assertions, supposedly scientific information and  
{SEC 2008-04} [Day 7] {03-19-09}

6

1 calculations and computations made by somebody, and, in  
2 many cases, unsupported by any of the testimony.

3 And, so, I guess what I'm trying to say  
4 is that the Application itself, while, obviously, a  
5 document of record in the case is one thing, many of the  
6 factual allegations contained in the Application document  
7 are unsupported and unsponsored by any particular witness  
8 in the case. And, so, to the extent that the Application  
9 includes information that is not also repeated in  
10 testimony, that information should not be given any  
11 credit. So, that's my first issue.

12 Do you want to discuss that one or  
13 should I move onto second?

14 CHAIRMAN GETZ: Well, let's hear the  
15 second. Well, is it the second of two or how long is the  
16 list?

17 MR. ROTH: It's the second of two, and  
18 the second one is really unrelated to the first. The  
19 second issue is that it has come to my attention late  
20 yesterday that there's a news report published in papers  
21 in New York concerning unpaid contractors at one of the  
22 Noble affiliates that operate -- that constructed and  
23 operates windparks in New York State. And, that an amount  
24 in excess of \$700,000 remains unpaid to an electrical

1 contractor. And, that electrical contractor has, as part  
2 of its security package, obtained and placed mechanics  
3 liens against assets in New York State, including  
4 properties belonging to landowners on which those projects  
5 have easements to construct turbines.

6 I sent Attorney Patch an e-mail  
7 yesterday asking for a clarification of some information  
8 concerning those allegations. And, this morning I  
9 received an e-mail from Attorney Patch providing me sort  
10 of a general explanation, but without getting into any of  
11 the facts. I am hopeful that there is a reasonable  
12 explanation for this. But, at this point, we have talked  
13 about having a conference call tomorrow to see if I could  
14 get more information that would satisfy my concerns about  
15 it. But that, if I am not satisfied by that information,  
16 I will probably wish to recall some of the Applicant's  
17 witnesses to cross-examine them further about that, that  
18 situation. Those witnesses would be Mr. Lowe, Mr. Wood,  
19 and Mr. Mandli.

20 CHAIRMAN GETZ: Okay. Well, I guess, at  
21 this moment, what I would suggest is, let's get on the  
22 record responses to those two issues, and then proceed  
23 with the examination of Mr. Lloyd-Evans. And, we'll come  
24 back to how to proceed on those, on those positions.

1 But, Mr. Patch, if you could respond to  
2 the Application and to this issue about liens, I guess it  
3 is, in New York.

4 MR. PATCH: Right. First of all, Mr.  
5 Chairman, with regard to the objection to the Application,  
6 I mean, the Application has been here since last summer.  
7 It was filed on July 15th. It's required by the law.  
8 It's required by the regulations. It's something that we  
9 have asked to be put in the record, because, obviously, it  
10 is submitted in order to comply with the regulations. I  
11 think your rulings require that information responding to  
12 each of the different findings that you have to make has  
13 to be submitted to the Committee. And, so, we submitted  
14 it in conformance with those rules and with the law. I  
15 believe, at some point during this process, maybe it was  
16 Ms. Linowes, it might have been Mr. Roth, had asked "which  
17 witnesses would be available to answer questions about the  
18 Application?" And, we had indicated that the panel that  
19 -- including Mr. Decker and Mr. Lyons would be the ones  
20 that would be available to do that.

21 I think it's kind of a flimsy objection  
22 at this point in time to raise it. I just think it's, you  
23 know, here we are at the end of the proceeding and he's  
24 objecting to that. And, we've had testimony about

{SEC 2008-04} [Day 7] {03-19-09}

9

1 numerous parts of that Application throughout the  
2 proceeding. We've referred to it. You know, we certainly  
3 intend to refer to it. I just think it's a very strange  
4 objection to come at this point of the proceeding. And, I  
5 think we have complied with all of your rules and  
6 procedural requirements.

7 With regard to the second issue, I guess  
8 I would object, first of all, to the recalling of any

9 witnesses at this point in time. I think there's a  
10 question about relevance of this information at this point  
11 in time. Secondly, I got the e-mail from Mr. Roth last  
12 night at home. I responded to him this morning. I mean,  
13 he's correct, we responded in a pretty general way,  
14 although we also provided some specific information that  
15 we had indicated would be confidential information. So, I  
16 can't really talk about that on the record at this point  
17 in time. But, I mean, I guess I could, if we went into  
18 closed session. But I think liens are commonly found in  
19 any large construction projects, with multiple vendors.  
20 And, that typically ends at the end of a project. Those  
21 are fairly typical things that you see happen.

22 It's my understanding that Noble's in  
23 the process of trying to work this out. But I don't think  
24 it's by any means atypical for this kind of thing to

{SEC 2008-04} [Day 7] {03-19-09}

10

1 happen.

2 I did offer to Mr. Roth that, if he  
3 wasn't satisfied with this response, as he just indicated  
4 to me just before the hearing started, that we'd be happy  
5 to try to do a conference call tomorrow to see if we can  
6 address his concerns. But we would object to the  
7 recalling of any witnesses. We don't see how this is  
8 really relevant at this point in time. But, nonetheless,  
9 as we have throughout the process, we'll do our best to  
10 try to respond to the questions that he has.

11 CHAIRMAN GETZ: All right. Then, I  
12 guess, for purposes of this afternoon, I'll defer further  
13 argument or consideration of these issues while we hear

14 from the witness who's scheduled for today. So, if you  
15 could conduct your direct please, Mr. Roth.

16 MR. ROTH: Okay. I would just say, as a  
17 last point for the record, I do believe it's relevant with  
18 respect to their managerial and technical capability.  
19 And, I'll leave it at that.

20 (Whereupon Trevor Lloyd-Evans was duly  
21 sworn and cautioned by the Court  
22 Reporter.)

23 TREVOR LLOYD-EVANS, SWORN  
24 DIRECT EXAMINATION  
{SEC 2008-04} [Day 7] {03-19-09}

[WITNESS: Lloyd-Evans]

11

1 BY MR. ROTH:  
2 Q. Mr. Lloyd-Evans, I'm showing you a document that's  
3 entitled "Testimony of Trevor Lloyd-Evans on Behalf of  
4 Counsel for the Public", dated "December 2008". Is  
5 this your testimony?  
6 A. It is.  
7 Q. Is that your signature?  
8 A. Yes.  
9 Q. Are you the same Trevor Lloyd-Evans who wrote this  
10 testimony and signed that?  
11 A. That's correct.  
12 Q. Do you have anything about the testimony that you would  
13 like to correct or add to at this point?  
14 A. No, I think it's fine at this point.

15 MR. ROTH: Okay. Thank you.

16 WITNESS LLOYD-EVANS: Thank you.

17 MR. ROTH: Okay. The witness is  
18 available for cross-examination.

19 CHAIRMAN GETZ: Thank you. Mr. Kimball,  
20 do you have any questions for the witness?

21 MR. KIMBALL: We do not.

22 CHAIRMAN GETZ: Ms. Linowes?

23 MS. LINOWES: Yes, Mr. Chairman. Good  
24 afternoon.

{SEC 2008-04} [Day 7] {03-19-09}

12

[WITNESS: Lloyd-Evans]

1 CROSS-EXAMINATION

2 BY MS. LINOWES:

3 Q. Mr. Lloyd-Evans, there was testimony by Dr. Sanford and  
4 Mariani regarding the wetlands impact, and that the  
5 impacted wetlands, 13 wetlands -- 13 acres of wetlands  
6 would be filled, would result in a net loss of those  
7 wetlands, except for the opportunity to create new  
8 wetlands. That mitigation set-aside with wetlands on  
9 it did not result in a net zero loss. Do you -- I  
10 realize you're not talking about wetlands, but do you  
11 agree with that --

12 MS. GEIGER: I object to the question,  
13 Mr. Chairman, for that precise point. This witness is not  
14 being offered on the subject of wetlands.

15 MS. LINOWES: Okay. Then, let me get to  
16 the point I'm trying to ask.

17 CHAIRMAN GETZ: Actually, Ms. Linowes,  
18 for a second, could we get that turned down a little?

19 (Off the record)

20 BY MS. LINOWES:

21 Q. With regard to habitat loss, you know that there are  
22 some amount of acres that will be lost with regard to  
23 habitat utilized by Bicknell's thrush and other

24 species, bird species. Is it -- Would you say that  
{SEC 2008-04} [Day 7] {03-19-09}

13

[WITNESS: Lloyd-Evans]

1 mitigation land that's been set aside results -- the  
2 result will be a net zero loss of habitat?  
3 A. I don't think anyone could claim that there would be a  
4 "zero loss of habitat". Certainly, any development is  
5 going to reduce the high altitude high elevation  
6 spruce-fir forest. The mitigation appears to be an  
7 attempt to solve that, and I have read the High  
8 Elevation Mitigate Settlement Agreement. But zero?  
9 No, obviously not.  
10 Q. So, how is the Mitigation Plan an "attempt to solve  
11 it", what is it that you mean by that?  
12 A. The set-asides, and the lack of cutting, and the  
13 general protection, I won't go into all of it, seems to  
14 be a reasonable attempt on those areas to set aside  
15 some breeding areas and to provide better protection,  
16 bearing in mind that otherwise there could be such  
17 things as logging and other impacts that could have  
18 gone on otherwise. But that is only the breeding  
19 passerine birds that I'm talking about.  
20 Q. Now, during cross-examination testimony by Mr. Staats  
21 of Fish & Game, he confirmed that he, at one point  
22 during the technical meetings, and I believe it was a  
23 technical meeting that you were present at, he had said  
24 that "the State of New Hampshire has a global  
{SEC 2008-04} [Day 7] {03-19-09}

14

[WITNESS: Lloyd-Evans]

1 responsibility to protection of the habitat for

- 2 Bicknell's thrush." Do you recall his statement during  
3 the technical meetings?
- 4 A. Yes. And, I certainly remember reading it in his  
5 testimony originally as well, yes.
- 6 Q. Now, in your prefiled testimony, you discuss the effort  
7 to identify birds that are present at the site. And,  
8 do we have, on the basis of that, the studies that have  
9 been conducted, do we have a good sense of how many  
10 Bicknell's thrush will be displaced as a result of this  
11 development?
- 12 A. We do not at this time, no.
- 13 Q. Do you agree that Bicknell's thrush, based on the  
14 studies, are likely present at this site?
- 15 A. Yes.
- 16 Q. Do you believe that they are present at this site?
- 17 A. They were certainly observed by the New Hampshire  
18 Audubon Survey in at least two situations, so, yes.
- 19 Q. Now, given the sensitivity of the Bicknell's thrush, at  
20 least in its population, world population, the loss of  
21 this habitat, is there any certainty that those  
22 Bicknell's thrush that are present at the Project site  
23 will find there way to the mitigation land and live  
24 happily?

{SEC 2008-04} [Day 7] {03-19-09}

15

[WITNESS: Lloyd-Evans]

- 1 A. I don't think I can answer that question. I'm not sure  
2 anyone else could.
- 3 Q. They will be impacted?
- 4 A. They will be impacted to some extent. And, we do not  
5 have enough information at the moment on the numbers of  
6 Bicknell's thrushes from the survey data presented so

- 7 far to say what the impact will be.
- 8 Q. But you would confirm that the Bicknell's thrush  
9 habitat -- this is -- this is prime Bicknell's thrush  
10 habitat?
- 11 A. Yes. That certainly is true.
- 12 Q. Okay. Now, in terms of the studies that were conducted  
13 on birds and bats, this would be the radar studies, as  
14 well as the raptor study that was conducted, Mr.  
15 Pelletier, for Stantec, testified under  
16 cross-examination that "the level of effort that was  
17 conducted was equivalent to or at least equivalent to  
18 what has been conducted at other wind energy  
19 facilities." Is that the standard by which we should  
20 be conducting studies?
- 21 A. I notice that U.S. Fish & Wildlife, for example, were  
22 suggesting three years of studies. How often that  
23 happens, I'm not sure. I think that the breeding bird  
24 survey was well studied by competent people. But it

{SEC 2008-04} [Day 7] {03-19-09}

16

[WITNESS: Lloyd-Evans]

1 might be now, if we are interested in any affects  
2 post-construction, we need to know exactly what's there  
3 first. And, so, that would perhaps be reasonable, now  
4 that we have all decided on the area of wind towers and  
5 lines, to do some more thorough studies there and find  
6 exactly what we have at the moment.

7 The raptor study, which was 11 days on  
8 Owl head Mountain, is not sufficient, in my opinion, for  
9 us to be able to say anything about the effect on these  
10 raptors. And, bats, I notice that U.S. Fish & Wildlife  
11 pointed out that less than one percent of the area, of

12 the length area of the turbine strings at two sites  
13 were sampled. That seems like a fairly small amount.  
14 And, as we know, one high sampling area and one low  
15 sampling area. And, the season could be extended.

16 So, it just generally seems to me, in  
17 answer to your question, sorry, I've gone on a little  
18 bit, that we do need more detail if we are to say  
19 exactly what's there now and, under the current  
20 scenario of development, and then be able to do some  
21 reasonable post-construction studies, which, of course,  
22 would be very important.

23 Q. Now, so, if I understand you correctly, you do not --  
24 well, I'm asking you, I guess. That, in terms of a  
{SEC 2008-04} [Day 7] {03-19-09}

17

[WITNESS: Lloyd-Evans]

1 baseline study, to understand exactly what the  
2 populations are resident in this site or that utilize  
3 this site, whether they're passing by or not, we don't  
4 have a good understanding of the baseline?

5 A. I think that's basically true.

6 Q. So, to go back, after-the-fact, post-construction  
7 studies to determine the amount of decline or avoidance  
8 of the property -- of the site, by these species,  
9 without knowing the initial starting point, are you  
10 suggesting that we -- how can we make a determination  
11 as to what impact the Project site had?

12 A. I think we need better data before construction, so  
13 that we can compare what happens after construction.

14 Q. Is it unreasonable to request that, and for the moment  
15 imagine this is not a wind energy facility, but some  
16 other type of development, is it reasonable to expect a

17 fairly solid baseline study before we conduct  
18 post-construction studies?

19 A. Yes. Since this is particularly a wind energy project,  
20 then such species, as migrating raptors and breeding  
21 raptors, are actually of more concern, than if we were  
22 putting up a ski resort.

23 Q. And, then, I just have two more questions. In terms of  
24 the raptor study, Stantec spends some time in their

{SEC 2008-04} [Day 7] {03-19-09}

18

[WITNESS: Lloyd-Evans]

1 testimony arguing that, given their 11 days of effort,  
2 what they say is generally between the hours of 9:00  
3 and 3:00, they observed raptors, that the level of  
4 raptors that they studied -- or, observed, rather, was  
5 considerably less than other Hawk Sites or observation  
6 sites within New Hampshire. Now, at those other Hawk  
7 Sites, how many days do they typically observe raptors  
8 during mitigation period?

9 A. I have seen studies in the sort of 10 to 20 days, by  
10 consulting firms, such as Stantec, for some studies,  
11 that sort of number. Many of the other raptor watching  
12 sites are actually staffed by volunteers. And, so,  
13 they have much more complete coverage, and perhaps are  
14 not comparable. But I think that one season for eleven  
15 days is not adequate for us to be able to determine. I  
16 noticed no broad-winged hawks, which is one species of  
17 raptor, and Fish & Wildlife pointed out there were none  
18 noted there, and they also, in this case, U.S. Fish &  
19 Wildlife, a fairly, one of the most abundant raptors  
20 passing through this area. So, it seems to me that  
21 perhaps one should look earlier, as well as a little

22 later, and have a much more thorough study than the 11  
23 days we have so far.

24 Q. So, would you agree that Hawk Migration Association of  
{SEC 2008-04} [Day 7] {03-19-09}

19

[WITNESS: Lloyd-Evans]

1 North America, in other observation sites, are, in  
2 fact, observing some time, in this area, in New  
3 Hampshire, from the beginning of September through to  
4 perhaps as late as early December?

5 A. There are some species, like Golden Eagle, which pass  
6 by much later than the study done by Stantec, yes.

7 Q. So, to draw the conclusion, based on 11 days, which are  
8 not contiguous days, conducted by Stantec, to draw the  
9 conclusion that "this site has a lower raptor count  
10 than other sites", is that a valid conclusion?

11 A. I think I would like to see more data before making  
12 that conclusion.

13 Q. Well, let me ask you this question, in terms of the  
14 days, those days which they were not observing raptors,  
15 is it reasonably certain that raptors were flying on  
16 those days?

17 A. I really can't say.

18 Q. Okay.

19 A. But we do not have enough data to say that we have  
20 adequately sampled the raptors in 11 days. I think we  
21 need more data.

22 Q. Okay. And, then, just one last question. It sounds  
23 like that you've answered this question anyway, but  
24 I'll ask it just the same. You would concur with Fish

{SEC 2008-04} [Day 7] {03-19-09}

20

[WITNESS: Lloyd-Evans]

1 & Wildlife Service's and Fish & Game's progress report,  
2 which both said that the recommendation is that  
3 additional studies would be conducted?

4 A. Yes.

5 MS. LINOWES: Thank you, Mr. Chairman.

6 WITNESS LLOYD-EVANS: Thank you.

7 CHAIRMAN GETZ: Thank you, Ms. Linowes.

8 Mr. Patch or Ms. Geiger.

9 MS. GEIGER: Thank you, Mr. Chairman.

10 BY MS. GEIGER:

11 Q. Mr. Lloyd-Evans, is it fair to conclude from your  
12 prefiled testimony that your primary concerns about the  
13 Project relates to its potential effects on the habitat  
14 for breeding birds, like Bicknell's thrush, as well as  
15 some bird studies that were conducted by the New  
16 Hampshire Audubon Society, and the bird and bat studies  
17 conducted by Stantec Consulting?

18 A. Yes. And, breeding raptor studies that were not  
19 conducted by Stantec to this point.

20 Q. Now, isn't it true that, on Page 10 of your prefiled  
21 testimony, and I'll let you find that, you say that  
22 "The most significant impact of the project from the  
23 perspective of avian populations is the proposed  
24 removal of" the breeding bird habitat, which you've

{SEC 2008-04} [Day 7] {03-19-09}

21

[WITNESS: Lloyd-Evans]

1 described as a "montane spruce/fir habitat"?

2 A. Yes, which is the same as "high-elevation spruce-fir  
3 forests, as we've heard. And, yes, I think that  
4 probably was the most significant impact of the  
5 breeding birds up there, yes.

6 Q. Okay. And, I think you indicated that you reviewed the  
7 provisions of the High Elevation Mitigation Settlement  
8 Agreement, correct?

9 A. I have.

10 Q. Okay. And, you're aware that Public Counsel has made a  
11 commitment that he would not be contesting that  
12 Settlement Agreement?

13 A. I was not aware of that.

14 Q. Okay. Well, would you take my representation subject  
15 to check?

16 A. Certainly.

17 MR. ROTH: You can take that  
18 representation.

19 MS. GEIGER: Thank you.

20 BY MS. GEIGER:

21 Q. Now, do you believe that the Settlement Agreement  
22 provides adequate mitigation and compensation for the  
23 loss of potential breeding bird habitat?

24 A. I think I would say that it is a very reasonable  
{SEC 2008-04} [Day 7] {03-19-09}

22

[WITNESS: Lloyd-Evans]

1 attempt to replace habitat, inasmuch as that can be  
2 done, of the high elevation spruce-fir forests. So, I  
3 think it's a very reasonable attempt, yes.

4 Q. Okay. But, isn't it true that, in response to a data  
5 request that the Applicant sent you, Data Request 1-6,  
6 you indicated that "if there were some loss of habitat,  
7 and if it were permitted, that you would defer  
8 mitigation techniques to experts, such as the State and  
9 federal agencies." Do you recall that?

10 A. Yes, I do.

11 Q. Okay. So, and you're aware that the State Fish & Game  
12 Department has signed on to that High Elevation  
13 Mitigation?

14 A. Yes. Yes.

15 Q. Thank you. Now, you haven't visited the proposed  
16 Project site personally to confirm, through a field  
17 visit, whether portions of the Project are, in fact,  
18 suitable habitat for Bicknell's thrush, have you?

19 A. I have not, no.

20 Q. Okay. And, are you aware that Stantec Consulting  
21 conducted field surveys and determined that much of the  
22 Mount Kelsey and Dixville Peak ridge line is not  
23 considered suitable Bicknell's thrush habitat due to  
24 maturing forest conditions?

{SEC 2008-04} [Day 7] {03-19-09}

23

[WITNESS: Lloyd-Evans]

1 A. I read that in their statement.

2 Q. Okay.

3 A. Mature forests, at that elevation, tends to have  
4 blowdowns. And, then, can become fragmented, and  
5 actually becomes slightly better Bicknell's thrush  
6 habitat. So, it isn't just a matter of old forest.  
7 But yes, I certainly read their statement.

8 Q. And, isn't it true that Bicknell's thrush prefer young,  
9 dense, regenerating patches of spruce and fir in  
10 subalpine areas?

11 A. Many of them do. But that is also found within old  
12 forests, because of this patchy blowdown and  
13 fragmentation of forests at high elevation. It isn't  
14 necessarily, if I were trying to create habitat, I  
15 wouldn't cut forests and let them grow back. It's the

16 patchwork, I think, that's the important part of the  
17 habi tat.  
18 Q. But what about the edge effect? Isn't it possible that  
19 Bicknell's thrush may utilize the forest edges, --  
20 A. It may.  
21 Q. -- rather than the cleared areas of the Project?  
22 A. It may do that.  
23 Q. Okay. Good. Turning now to bat and bird studies, I  
24 believe on Page 5 of your prefiled testimony, and I'll  
{SEC 2008-04} [Day 7] {03-19-09}

24

[WITNESS: Lloyd-Evans]

1 let you find that. You say that "Nocturnal bird  
2 migration radar studies, diurnal migrating raptor  
3 studies, and bat echolocation studies were performed by  
4 qualified personnel from Stantec Consulting", correct?  
5 A. Yes.  
6 Q. So, you're not disputing the qualifications of the  
7 Stantec consultants to conduct these studies, are you?  
8 A. No.  
9 Q. Okay. And, also on Page 5 of your prefiled testimony,  
10 you note that the breeding bird surveys were conducted  
11 by staff of the New Hampshire Audubon Society, under  
12 the direction of Doctor Carol Foss, who is a noted  
13 authority on high elevation avian biology, correct?  
14 A. Correct.  
15 Q. So, you don't dispute New Hampshire Audubon Society's  
16 abilities or qualifications for conducting the breeding  
17 bird surveys, do you?  
18 A. I don't dispute the qualifications of the personnel in  
19 these two studies. It's the amount of study or the  
20 duration of study that causes me problems.

21 Q. Okay. So, is it fair to say that you think there  
22 should have been more studies conducted?

23 A. Yes.

24 Q. Okay. And, what, if anything, would more  
{SEC 2008-04} [Day 7] {03-19-09}

25

[WITNESS: Lloyd-Evans]

1 pre-construction surveys at the site tell you what's  
2 going to happen at the site after the facility is  
3 constructed?

4 A. Given that, again, referring back to U.S. Fish &  
5 Wildlife, there's a recent letter of March 12th. Less  
6 than 7 percent of the site was surveyed by radar, and,  
7 under their calculations it seemed reasonable to me,  
8 for birds at night. For bats, less than one percent  
9 was sampled of the area of the turbine strings. And  
10 that, for raptors, there were only 11 days of study in  
11 one season. There were no breeding raptor surveys of  
12 any sort that I can find. Then, I think we need more  
13 data on these four important factors, before we can  
14 then say we have some idea of the populations before  
15 construction, and we will use this as a baseline to  
16 examine the effects after construction.

17 Q. Okay. So, you're not saying that, if you had more  
18 studies at this time, that that would tell you exactly  
19 what would happen post-construction, correct?

20 A. No, this is as a baseline, which is important.

21 Q. Okay.

22 A. Otherwise, it seems fairly pointless to do  
23 post-construction. But it's apart from potential  
24 mortality.

[WITNESS: Lloyd-Evans]

1 Q. Okay. So, would you agree with Stantec's opinion that  
2 post-construction information, combined with data from  
3 pre-construction surveys, will provide more useful  
4 information about potential collision risks, for  
5 example, to migrating raptors than any pre-construction  
6 survey alone?

7 A. In a sense, yes. But, without adequate  
8 pre-construction surveys, I don't quite see how you can  
9 talk about an effect of post-construction that was due  
10 to the construction. It seems to me you must have a  
11 good survey to start with, then you do your  
12 construction, then you do other surveys in these four  
13 areas, and then you'll have a much better chance of  
14 understanding what's going on. Whether that's done as  
15 an environmental assessment or a full environmental  
16 impact statement or merely more by Stantec's  
17 consultants is up to you.

18 Q. Do you know how many pre-construction surveys that  
19 Stantec has conducted at proposed and operational wind  
20 projects?

21 A. I'm not aware of it right now, no.

22 Q. Would it surprise you to learn that they have testified  
23 in this proceeding that they have conducted over 100?

24 MR. ROTH: I'm going to object to these

{SEC 2008-04} [Day 7] {03-19-09}

[WITNESS: Lloyd-Evans]

1 questions. The witness has already testified that he  
2 doesn't question their qualifications. He's just  
3 questioning that they haven't done enough studies here.

4 That they have done a bunch of studies somewhere else is  
5 not relevant.

6 CHAIRMAN GETZ: Ms. Geiger.

7 MS. GEIGER: Well, I'm merely asking the  
8 witness, he says that he hasn't questioned or isn't  
9 questioning Stantec's abilities. And, that it seems to  
10 me, I think we've heard testimony from Mr. Gravel or Mr.  
11 Pelletier indicating that they can draw some inferences  
12 from studies that they have conducted at other wind energy  
13 facilities. And, so, all I'm questioning the witness  
14 about is whether he knows about the fact that Stantec has  
15 conducted over 100 surveys elsewhere.

16 MS. LINOWES: Mr. Chairman, Stantec also  
17 testified that only one of those projects was actually an  
18 operating project that has a post-construction study done  
19 on it. So, having conducted pre-construction studies,  
20 with no follow-up post-construction studies will not  
21 inform the witness or the parties.

22 MR. ROTH: Or Stantec, based on their  
23 own thinking.

24 CHAIRMAN GETZ: I guess the witness,  
{SEC 2008-04} [Day 7] {03-19-09}

28

[WITNESS: Lloyd-Evans]

1 having testified that he agrees that the Applicant's  
2 professionals are competent to conduct the studies, I'm  
3 not sure that anything is added to the record by getting  
4 agreement on how many studies they may or may not have  
5 performed. So, I'll sustain the objection.

6 MS. GEIGER: Okay. Thank you.

7 BY MS. GEIGER:

8 Q. Now, Mr. Lloyd-Evans, are you aware of Stantec's

9 testimony in this case that "It is their professional  
10 opinion that the data collected at this site are  
11 appropriate and sufficient to properly evaluate whether  
12 the Project is likely to post a risk to migratory  
13 birds"?

14 A. Yes, I read that statement.

15 Q. Okay. Now, your testimony notes, I believe, on Page 7  
16 that there were "467 bat detector nights", and there  
17 was "no evidence of the presence of any state or  
18 federally protected bat species", correct?

19 A. Correct.

20 Q. Okay. And, outside of the -- And, getting back to the  
21 migratory -- or, excuse me, the raptor issue, outside  
22 of the Altamont Pass case, if you're aware of that?

23 A. I am, yes.

24 Q. Are you aware of any raptor mortalities at any other  
{SEC 2008-04} [Day 7] {03-19-09}

29

[WITNESS: Lloyd-Evans]

1 wind sites?

2 A. Yes, I believe there have been some raptor mortalities  
3 on sites on the east coast of England, and there have  
4 been some studies in Denmark.

5 Q. And, how about the United States?

6 A. There are very few operating wind farms of large scale  
7 over long periods in the United States. Altamont is  
8 certainly the worst, if you like, in terms of  
9 mortality.

10 Q. But how about operating wind farms in the United States  
11 of any scale as they relate to raptor mortality?

12 A. I think the summary by Stantec seems to -- they've got  
13 a table, I believe, of mortality, and that seemed

14 reasonable.

15 Q. And, by "reasonable", What do you mean?

16 A. Not -- It seemed as if they had made a good effort to  
17 find the published mortality from wind farms.

18 Q. And, what is that mortality, if you recollect?

19 A. The mortality is very low.

20 MS. GEIGER: "Very low". Thank you very  
21 much. I have no further questions.

22 CHAIRMAN GETZ: Okay. Questions from  
23 the Subcommittee? Mr. Scott.

24 DIR. SCOTT: I don't have a mike, but,  
{SEC 2008-04} [Day 7] {03-19-09}

30

[WITNESS: Lloyd-Evans]

1 if you can't hear me, Steve, we'll get one.

2 MR. PATNAUDE: Okay.

3 DIR. SCOTT: Good afternoon.

4 BY DIR. SCOTT:

5 Q. I had question, a couple questions for you. One  
6 related to, on Page 9 and then 10 of your testimony,  
7 you talk a little bit about "restoration",  
8 reforestation and regrowth.

9 A. Yes, sir.

10 Q. And, you reference "C. C. Rimmer", if that's correct,  
11 and you have a listing of different -- you summarize  
12 seven points from him, it sounds like?

13 A. Yes.

14 Q. I just wanted to get clarification. So, earlier in  
15 that you say "Restoration would involve planting of  
16 native species", and you said grant -- obviously, grass  
17 seeds that is not native there "is not appropriate".  
18 And, then, in the seven bullets, you then say any

19 "temporary cleared areas" should be allowed "to  
20 revegetate after construction". I was just curious, if  
21 you can clarify that for me, what -- are you suggesting  
22 there should be replanting or are you suggesting it  
23 should grow naturally?

24 A. I'm not a habitat restoration specialist. I think the  
{SEC 2008-04} [Day 7] {03-19-09}

31

[WITNESS: Lloyd-Evans]

1 two witnesses you had previously from Stantec  
2 Ecological Services would be better to answer this  
3 question. But, in terms of Bicknell's thrush, these  
4 came from a paper here, the comments by Rimmer, it's by  
5 McFarland, Rimmer, Frey Faccio and Collins,  
6 October 2008. And, it's a paper on the "Demography,  
7 Ecology and Conservation of Bicknell's Thrush in  
8 Vermont, with a Special Focus on the Northeastern  
9 Highlands." And, these gentlemen are probably the  
10 experts on Bicknell's thrush habitat and restoration,  
11 as I think it was going to be a ski operation,  
12 actually. And, they suggest that there be, obviously,  
13 minimal clearing, to avoid as much habitat destruction  
14 as possible. And, then, they suggest that native  
15 species be used to do revegetation. And, I think those  
16 are the gist of those, those summaries that I have on  
17 Page 9 and Page 10 of the testimony. Does that answer  
18 your question, sir?

19 Q. Sufficiently, yes.

20 A. Thank you.

21 DIR. SCOTT: One more?

22 CHAIRMAN GETZ: Please.

23 BY DIR. SCOTT:

24 Q. Also, obviously, there's been a lot of discussion today  
{SEC 2008-04} [Day 7] {03-19-09}

32

[WITNESS: Lloyd-Evans]

1 regarding pre- and post-construction surveys.

2 A. Yes.

3 Q. And, this may sound like a dumb question, but take it  
4 from where it comes, too. Do you think there's any  
5 value of surveys during construction, does that make  
6 any sense, or is that just not of value?

7 A. If we have adequate information on what is there before  
8 we start construction, I would have no problem in  
9 seeing what happens during construction. But, usually,  
10 there's a lot of disturbance. And, then, perhaps the  
11 value in terms of long-term populations, it's very  
12 important, after construction, to continue on at that  
13 point and find out what the long-term, as opposed to  
14 the short-term, disturbance factors are. But, yes. I  
15 mean, obviously, more data the better.

16 DIR. SCOTT: Thank you.

17 CHAIRMAN GETZ: Further questions?

18 Dr. Kent.

19 BY DR. KENT:

20 Q. I just want to try to clarify this discussion that you  
21 were having about Stantec's abilities. And, it sounds  
22 to me, and I need you to tell me if I'm correct or not,  
23 that you don't question Stantec's ability to conduct  
24 the studies, but you disagree with their ability to

{SEC 2008-04} [Day 7] {03-19-09}

33

[WITNESS: Lloyd-Evans]

1 interpret and reach conclusions based on the data they  
2 have collected?

3 A. And, also, that they have not conducted all of the  
4 studies that we would like to see, I think, which would  
5 include, for example, breeding raptors. There are no  
6 data on breeding raptors from Stantec, and they didn't  
7 do any studies on that. No, they -- certainly, you're  
8 exactly right. They're perfectly competent people. I  
9 have no problems with them at all. It's just that we  
10 would rather that we had better coverage, before we  
11 started saying that "No, there are no bats around".  
12 Half the species of bats were not identified, for  
13 example. That the fall raptors, we only have 11 days  
14 of study, is not adequate. And, so, it's the duration  
15 of the studies that I think we need much more data  
16 before we can draw conclusions.

17 Q. Is it accurate to characterize the studies that have  
18 been conducted for birds as "adequate for determining  
19 that there will be impacts, but inadequate to determine  
20 with any precision the extent of those impacts"?

21 A. Yes. And, again, with the breeding raptors, the  
22 possibility of breeding raptors, I happened to look  
23 through the USGS Breeding Bird Atlas. And, I notice  
24 that the Peregrine falcon, Bald eagle, Northern

{SEC 2008-04} [Day 7] {03-19-09}

34

[WITNESS: Lloyd-Evans]

1 harrier, and three-toed woodpecker and Bicknell's  
2 thrush, all of which are protected in various levels,  
3 that they're all present within this northern New  
4 Hampshire area, the Coos County area, as breeding  
5 species to some extent. It would make sense to find  
6 out, in this very large area of the wind turbines,  
7 whether there are any breeding birds. And, then, we

8 will be able to, obviously, say whether there will be  
9 any effect. But, if we don't know whether there are  
10 any breeding raptors there, then it's the same problem.  
11 And, he won't be able to see what happens afterwards.

12 Q. In your opinion, what's the purpose of the  
13 post-construction surveys?

14 A. I think that everyone is going to put their best  
15 efforts in, and including the proponent, and EPA, Fish  
16 & Wildlife, Army Corps of Engineers, New Hampshire Fish  
17 & Game, to come up with the best mitigation that we  
18 can, if this Project goes ahead. It makes, I think,  
19 logical and scientific sense to collect as much  
20 information beforehand on breeding birds, in the case  
21 of my testimony, but, obviously, in the endangered  
22 mammals and the wetland vegetation from other people's  
23 testimony, so that we can measure the effects. And,  
24 New Hampshire Fish & Game, and the other two

{SEC 2008-04} [Day 7] {03-19-09}

35

[WITNESS: Lloyd-Evans]

1 organizations, seem the appropriate ones to do the  
2 follow-up studies. And, I'm glad that there is some  
3 money in the Agreement to do follow-up studies. But  
4 follow-up studies are only going to be as good in terms  
5 of interpretation of change as your pre-construction  
6 studies. So, that's really the gist of my argument.

7 DR. KENT: Thank you.

8 CHAIRMAN GETZ: Mr. Harrington.

9 MR. HARRINGTON: Yes.

10 BY MR. HARRINGTON:

11 Q. Just referring back to your testimony on Page 10, where  
12 it gives a summary. It says "The most significant

13 impact from this project from the perspective of avian  
14 populations is the proposed removal of any montane  
15 spruce/fir habitat", which I'm taking as a fancy way of  
16 saying "over 2,700 feet"?

17 A. Yes, sir.

18 Q. Okay. Now, you're aware of the Settlement Agreement  
19 and the, I don't know, somewhere, 2,400 acres or  
20 something is going to be preserved?

21 A. Yes.

22 Q. To what extent does that address the concerns you  
23 raised here? The fact that, when you raised this, it  
24 was in December, it was before the Settlement

{SEC 2008-04} [Day 7] {03-19-09}

36

[WITNESS: Lloyd-Evans]

1 Agreement. Now, the Settlement Agreement has been  
2 shaped. How far does that go to addressing the  
3 concerns you raised in December?

4 A. I think it's a very reasonable attempt to do  
5 mitigation. I would, however, like to see more, now  
6 that we know exactly where the transmission lines and  
7 where the wind towers are going to be, and that has  
8 changed a little over the time of the surveys, I would  
9 like to see more information pre-construction in these  
10 precise areas. And, then, we'll be able to see how  
11 good our mitigation was.

12 Q. Okay.

13 A. But I think it was a good effort.

14 Q. And, then, just sort of looking at the revised  
15 testimony of Gravel and Pelham, in various places, they  
16 have responded to your testimony in December, and I'm  
17 not going to read each one of these to you, but let me

18 just get to a couple of them. They have talked about  
19 the number of days of -- "Do you have any comments  
20 relative to the testimony that the raptor surveys were  
21 inadequate?" And, this gets into the number of days  
22 and how they feel as though it was sufficient for  
23 various reasons, and, as you just stated, you felt it  
24 wasn't.

{SEC 2008-04} [Day 7] {03-19-09}

37

[WITNESS: Lloyd-Evans]

1 A. Yes.  
2 Q. So, I guess, and without getting into reading a whole  
3 mess of this, would it be correct to summarize this as  
4 saying that we have a group of experts here that have  
5 all looked at the same things and drawn slightly  
6 different conclusions?  
7 A. I guess that would be true in this case, of the two  
8 parties concerned, yes, sir.  
9 Q. Okay. And, is your major concern with the efforts of  
10 Gravel and Pelham then would be, given the fact that we  
11 have the Mitigation Agreement now, is the fact that you  
12 would like to see more pre-construction data collected?  
13 A. Yes, sir.  
14 MR. HARRINGTON: Okay. Thank you.  
15 CHAIRMAN GETZ: Mr. Normandeau.  
16 BY DIR. NORMANDEAU:  
17 Q. You had said -- You mentioned earlier that you haven't  
18 been up to the site, is that correct?  
19 A. I visited Dixville Mountain on one occasion, which is  
20 in my prefiled testimony. But I have not had an  
21 opportunity to go up into the site and do the studies  
22 and consulting.

23 Q. There was a breeding bird survey, correct, by Audubon?  
24 What would show different or what would be the

{SEC 2008-04} [Day 7] {03-19-09}

38

[WITNESS: Lloyd-Evans]

1 difference between a breeding bird survey and  
2 specifically a breeding raptor survey?

3 A. That's a good question.

4 Q. And, I'd elaborate just slightly, --

5 A. Yes.

6 Q. -- in that, when I talked at a couple of the other -- I  
7 asked this question previously with some other folks  
8 testifying. And, basically, I was told, if there had  
9 been breeding raptors, we would have picked them up in  
10 the breeding bird survey. So, I'm just trying to get a  
11 feel for what the difference would be?

12 A. Careful if you ask for detailed answers from  
13 biologist/professor types; we could be here all  
14 afternoon. The breeding bird surveys, they're called  
15 -- it's mostly for small birds, what I refer to as  
16 "passerine birds", they're woodpeckers, perching birds,  
17 song birds. And, the method there is to lay out a big  
18 series of circles, and then listen and observe for 50  
19 meters from the circle center. Given that you have  
20 enough circles, this is the adequate way of doing these  
21 surveys. And, we'll argue about whether there should  
22 be more or whether they should be along new lines. But  
23 that's basically how that works.

24 Q. I understand.

{SEC 2008-04} [Day 7] {03-19-09}

39

[WITNESS: Lloyd-Evans]

1 A. That does not work for raptors, because some of these  
2 large birds of prey can have territories that are of  
3 the orders of square miles. This ten minute count of  
4 only 50 meters from a point, when you're standing  
5 there, is a really terrible way of measuring raptors,  
6 because the chances -- just the sheer statistical  
7 chance of a raptor being in the area during your ten  
8 minute count is not very great. They also tend to be  
9 extremely wary birds, and so they're quite likely to  
10 flee without you even seeing them.

11 However, it is possible to do breeding  
12 raptor surveys, they're just larger scale. There have  
13 been surveys by helicopters in some -- in some studies.  
14 And, if you know where the breeding raptors are, you  
15 can get a pretty good idea just from observational  
16 surveys during breeding season. It's interesting that  
17 the point count method turned up one merlin, which is a  
18 raptor species, and no other raptor species. It's  
19 interesting that Stantec didn't even see a merlin  
20 during their fall raptor surveys. Stantec had a  
21 feeling that a considerable percentage, I forget what  
22 the number was, was it 40 percent, something like that,  
23 of the raptors they observed could have been resident  
24 breeding species. These weren't picked up by the very

{SEC 2008-04} [Day 7] {03-19-09}

40

[WITNESS: Lloyd-Evans]

1 adequately conducted Audubon surveys. So, they're just  
2 different methods of looking at these birds.

3 Q. Thank you.

4 A. Different lifestyles and different -- different  
5 territory sizes. I apologize for my Mid-Atlantic

6 accent and my low voice. Sorry.

7 CHAIRMAN GETZ: Mr. Harrington.

8 MR. HARRINGTON: Yes.

9 BY MR. HARRINGTON:

10 Q. Just as a follow-up, you know, obviously, you've  
11 mentioned a number of times here that you think there's  
12 a need for additional pre-construction data.

13 A. Yes.

14 Q. So, let's just assume for the sake of argument that you  
15 were to obtain that additional data and the Project was  
16 to be built. What do we do with the data two, three,  
17 four years from now, what does that allow us to do that  
18 we can't do without that pre-construction data?

19 A. Potentially, you could mitigate against problems. I  
20 mean, to take a very simple example, the original  
21 Altamont study in California with wind towers, these  
22 were one of the very first wind farms. And, these  
23 towers were supported by a large number of guy wires  
24 initially. Turns out that a lot of the raptorial birds

{SEC 2008-04} [Day 7] {03-19-09}

41

[WITNESS: Lloyd-Evans]

1 that were killed were hitting the guy wires. I believe  
2 we're now talking about single tower construction. So,  
3 you can make those sort of effects. There has been  
4 some work on the effects of the lighting that goes on  
5 top of towers. I believe we're talking now about a  
6 flashing, slow flashing red light on the top of these  
7 towers for safety, airplane point of view and so on.  
8 And, that is much better than the good old days when  
9 you had a single white light or a rotating white light  
10 on some of the lighthouses. They tended to attract

11 birds. So, in other words, you can attempt some  
12 mitigation even after construction has continued. And,  
13 this is a really major project for New Hampshire, and  
14 for New England as a whole, and it gives us a chance to  
15 be a leader and to show how it should be done. And, if  
16 we do find that we have made any mistakes, then, if  
17 they are as fully documented as possible, this will  
18 inform other people when they have to make decisions,  
19 such as the Committee has to in this instance, as to  
20 whether to put up more wind towers and where they  
21 should be and what level of siting there should be.

22 Q. So, I guess what you're saying is then, having better  
23 pre-construction data would allow you to better assess  
24 the actual effect of building the project? And, that

{SEC 2008-04} [Day 7] {03-19-09}

42

[WITNESS: Lloyd-Evans]

1 could go from the effect is basically what everyone  
2 assumed, and no additional mitigation required, or it  
3 was worse than what was assumed, and so it would direct  
4 you as to how to -- how to propose new mitigation or  
5 additional mitigation?

6 A. Yes, exactly.

7 MR. HARRINGTON: Okay. Thank you.

8 CHAIRMAN GETZ: Mr. Scott.

9 DIR. SCOTT: Good afternoon again.

10 BY DIR. SCOTT:

11 Q. On Page 9, you talk a little bit about -- you recommend  
12 a "moratorium on construction" as it relates to  
13 breeding season. And, you show "April to August".  
14 And, I'm just trying to get in my mind, that seems to  
15 leave, given when frost comes up there, that seems to

16 almost -- you have no time to build anything up there.  
17 I was just curious, with that in mind, within that time  
18 frame, is there a real critical two weeks or something  
19 that, you know, if there was not a moratorium from  
20 April to August, "well, if you can't do that, then at  
21 least do this", that type of thing?

22 A. Yes. The dates of, if you wanted to go and disturb  
23 this habitat, when should you do it, the date is first  
24 of August. So, we're talking end of July. And, after  
{SEC 2008-04} [Day 7] {03-19-09}

43

[WITNESS: Lloyd-Evans]

1 the first of August, Bicknell's thrush, in particular,  
2 which is a species of special concern and diminishing  
3 populations, one that we use as an indicator for the  
4 whole bird population. So, it's a reasonable one to  
5 do. That particular species, the young, they're  
6 usually single brooded. So, the young are pretty much  
7 fledged and able to take care of themselves, even  
8 though they will repair to one territory throughout  
9 August before they migrate south. But, if you start  
10 your work after the first of August, then you can  
11 reasonably sure that that would be okay for Bicknell's  
12 thrush, and, by extension, most other species.

13 The beginning date I would very much  
14 defer to New Hampshire Fish & Game's experts. I was  
15 asked to look at a whole suite of species there. I  
16 used 1st April as a date there because some of the  
17 earlier species of lesser concern, like winter wren,  
18 might actually be starting to breed there. But that  
19 would be a matter for the local -- the local biologist  
20 to determine when would be the first dates. For your

21 information, the Bicknell's thrushes probably won't be  
22 back onto the site until the middle of May, for  
23 example.

24 CHAIRMAN GETZ: Other questions from the  
{SEC 2008-04} [Day 7] {03-19-09}

44

[WITNESS: Lloyd-Evans]

1 Committee or Mr. Iacopino?

2 MR. IACOPI NO: I just have one question.

3 BY MR. IACOPI NO:

4 Q. Sir, you referenced an article by a gentleman by the  
5 name of "Rimmer", is that correct?

6 A. Yes.

7 Q. I just want to show you the Exhibit List in the case.  
8 And, there are two articles that have been entered as  
9 exhibits by the Appalachian Mountain Club, AMC-9 and  
10 AMC-10. Is that the -- "C. C. Rimmer", is that the  
11 individual you were referencing?

12 A. Yes.

13 Q. And, are these the article -- are either one of these  
14 the article that you were referencing?

15 A. The reference was to Rimmer, 2008. I think it should  
16 be more adequately "McFarland, Rimmer, Frey, Faccio  
17 Collins, 2008", and that would be this study here  
18 (indicating).

19 Q. Okay. So, that's a study we don't have.

20 A. I believe that's a more recent study. This was only  
21 October 2008, so it's a very recent study, but I was  
22 just able to get my hands on this.

23 MR. IACOPI NO: Thank you.

24 WITNESS LLOYD-EVANS: I'd be happy to  
{SEC 2008-04} [Day 7] {03-19-09}

[WITNESS: Lloyd-Evans]

1 give you the full reference.

2 CHAIRMAN GETZ: Okay.

3 MR. IACOPI NO: Thank you.

4 CHAIRMAN GETZ: Mr. Harrington, do you  
5 have another question?

6 MR. HARRINGTON: Yes, I'm sorry. I  
7 forgot this one.

8 BY MR. HARRINGTON:

9 Q. I'm not sure, are you aware that there was a permit  
10 issued to log on the area above 2,700 feet? I think it  
11 was on the -- I guess it's on the Kelsey Mountain area.  
12 This was issued, and, in fact, apparently has been put  
13 on hold, pending the outcome of this project.

14 A. I read that statement. That's absolutely all I know  
15 about it, though.

16 Q. Okay. And, I guess I'm just trying to get the overall  
17 effect in your area of expertise. Given the fact that  
18 there will be a large area that's protected from  
19 logging, as compared to if this Project doesn't go  
20 forward, there would be, I would have to assume,  
21 continued logging, some of which would be above the  
22 2,700 foot zone. How do those two things balance out?

23 A. If we protect from logging, that has to be good. I  
24 think this large area of upland has the potential of

{SEC 2008-04} [Day 7] {03-19-09}

[WITNESS: Lloyd-Evans]

1 being a -- what we call a "source population" for  
2 Bicknell's thrush, in particular. Although, again,  
3 we're representing a whole suite of birds, which are,  
4 again, environmental indicators, but let's stick with

5 Bicknell's thrush, we know a lot about it. And, the  
6 less fragmentation and the less clear-cutting and the  
7 less loss of that habitat, then the healthier the  
8 population would be. The studies show this. If it is  
9 a source population, then maintaining as much  
10 unfragmented habitat as possible will be very relevant  
11 to all the Bicknell's thrushes in the world, which is  
12 not very many. So, we are talking of something like  
13 40 percent maybe of the thrush population being in New  
14 Hampshire, I believe those are the figures. It's a  
15 very significant percentage anyway. If this is a  
16 source population, then individual's access to the  
17 breeding population will be able to go into other high  
18 elevation spruce-fir forests in other parts of New  
19 England and continue to provide population diversity.  
20 And, that's really what we're talking about in this  
21 particular instance. So, this is why there -- I think  
22 there's so much emphasis on this being a valuable area  
23 for that particular species.

24 Q. Okay. And, just so I get this clear, because there's

{SEC 2008-04} [Day 7] {03-19-09}

47

[WITNESS: Lloyd-Evans]

1 been a lot of discussion on this "unfragmented",  
2 "fragmented" and what it all means. Maybe we can kind  
3 of look at it in more specific examples because -- what  
4 we're dealing with here. What would constitute  
5 creating more fragmented territory? The permanent  
6 building of the roads as proposed for the Wind Project  
7 and the cessation of a lot of logging because of the  
8 Settlement Agreement, or no Wind Project, but they  
9 continue to log the whole area, as they have done in

10 the past?

11 A. I think cessation of logging is important. There are  
12 other effects of the creation of roads, for example,  
13 and construction. And, some of the other effects of  
14 this fragmentation is that it allows an avenue for  
15 potential nest predators. These may be mammals that  
16 come down along. There are certain species of birds,  
17 brown-headed cowbird is a famous one, which lays its  
18 eggs in other birds' nests. But they will not go into  
19 unfragmented forests, for example. There may be more  
20 possibility of predation by aerial predators, ravens,  
21 those sorts of species.

22 Q. Excuse me. Now, when you say "roads", that would apply  
23 to the permanent roads, --

24 A. That would apply to --

{SEC 2008-04} [Day 7] {03-19-09}

48

[WITNESS: Lloyd-Evans]

1 Q. -- logging roads, one or the other or both?

2 A. -- permanent roads, logging roads, power lines that are  
3 kept cleared underneath, any of these sort of  
4 disruptions to a formerly intact forest. So, that's  
5 why we'd just like to see as much as possible of the  
6 intact forest as unfragmented as possible.

7 MR. HARRINGTON: Okay. Thank you.

8 CHAIRMAN GETZ: Any other questions from  
9 the Subcommittee? Hearing nothing, then would you like to  
10 pursue redirect, Mr. Roth? Do you need a few minutes or  
11 --

12 MR. ROTH: I would. And, no, I don't.  
13 I can just get right into.

14 CHAIRMAN GETZ: Please proceed.

15 MR. ROTH: I have a very few questions.  
16 REDIRECT EXAMINATION

17 BY MR. ROTH:

18 Q. Mr. Lloyd-Evans, it was pointed out that the post  
19 mortality studies that have been referenced in the  
20 Stantec documents indicate a very low raptor mortality  
21 from wind farms. Do you remember that testimony?

22 A. Yes, I do.

23 Q. Is it -- Do you think that would it be nonetheless  
24 prudent to determine raptor abundance prior to

{SEC 2008-04} [Day 7] {03-19-09}

49

[WITNESS: Lloyd-Evans]

1 construction to -- what would the effect of raptor  
2 abundance be on post-construction mortality, let me put  
3 it that way?

4 A. I hope I've been clear that we do not have enough data  
5 to be able to base any indication of raptor  
6 populations. Raptor populations would have to be  
7 breeding populations, they would be the only things  
8 that we could measure. Fall raptors, migrating south  
9 in the fall or migrating north in the spring, we cannot  
10 work out a population. We cannot establish a  
11 population, because it's just such a small sample. We  
12 don't know where the raptors migrating past Kelsey  
13 Mountain go to breed, we don't really know where they  
14 go in the winter. So, it's a small sample passing by.  
15 Or, we can do, to the best of our ability, are  
16 comparative analyses. And, so, I would suggest this is  
17 why it's important that we have these data before  
18 construction and after construction.

19 Q. If there were abundant raptors, would one expect to see

20 a higher mortality --

21 A. Yes.

22 Q. -- caused by a facility like this?

23 A. Generally speaking, the higher the abundance of  
24 raptors, the greater mortality. And, if we go back

{SEC 2008-04} [Day 7] {03-19-09}

50

[WITNESS: Lloyd-Evans]

1 again to the bad example that everyone always quotes of  
2 Altamont Pass. It happened to be a pass in a mountain  
3 region, and migrating raptors came through that pass at  
4 a low level, less than the magic number for us, which  
5 is, what, 125 meters. And, there were also possibly  
6 breeding raptors. The mortality is not known. Perhaps  
7 as much as half of the mortality in California in this  
8 very bad example was from breeding birds, that were  
9 just flying around the area, and again moving through  
10 that pass at low level.

11 Since this is a high elevation area, and  
12 the series of peaks and ridges and passes, if you like,  
13 I think it's extremely important that we know what  
14 raptors are breeding there, and have much better  
15 information on what raptors are migrating in spring and  
16 fall.

17 Q. Aside from indirect impacts by loss of habitat, what  
18 effects on breeding bird populations would you expect  
19 to see from, especially abundant breeding bird  
20 populations, from coexistence around wind turbines in  
21 operation?

22 A. This relates back, I think, particularly to the  
23 discussion with Mr. Harrington about fragmented forest.  
24 The problems are (a) loss of habitat, permanent

[WITNESS: Lloyd-Evans]

1 habitat, from around the wind towers and the permanent  
2 roads. And, then, (b) a temporary loss of a greater  
3 area during construction, which is then revegetated,  
4 and which then may indeed, after a number of years,  
5 become a good habitat for species, such as Bicknell's  
6 thrush. So, there is that loss of permanent habitat,  
7 and mitigation attempting, of course, to replace or  
8 upgrade other habitats to allow for those populations.  
9 The fragmentation allows in potential predators for  
10 many of these interior forest species. This is a  
11 problem, and not just Bicknell's thrush, but a suite of  
12 other species, many of which are declining in the State  
13 of New Hampshire and in New England generally. And,  
14 then, nest parasites, as I referred to the brown-headed  
15 cowbird, can now come in, lay their eggs in the  
16 Bicknell's thrush nests, and they come in, cover and  
17 close off the Bicknell's thrushes, and the parents  
18 don't recognize it, and just rear the cowbird. Which  
19 is good for cowbirds, but very bad for thrushes. The  
20 reason that the Bicknell's thrush doesn't recognize  
21 these species, for example, is that they're an interior  
22 forest bird, and they have not been exposed to these  
23 edges. So, that edge effect is true for a suite of  
24 species. So, those are the sorts of problems that are

[WITNESS: Lloyd-Evans]

1 affected -- that are caused by the post development.  
2 Q. If you had an abundance of breeding birds on a

3 location, would you expect some of them to come into  
4 direct contact with rotor sweep and turbines?  
5 A. There are two species, and one of them happens to be  
6 Bicknell's thrush, the flight display of the Bicknell's  
7 thrush during the breeding season, the male sings, and  
8 he flies high, and he flies in circles during the  
9 breeding season, and sometimes during the fall. So,  
10 this is his displayed flight, to define his territory  
11 and to attract his female. I looked up the data, and  
12 in this study, Bicknell's thrush, Birds of North  
13 America, Number 592, it's put out by the Academy of  
14 Natural Sciences and AOU. Written by C. C. Rimmer,  
15 whose name keeps appearing in north wild studies, and  
16 other authors. The flight display of the Bicknell's  
17 thrush goes up between 25 and 70 meters above ground,  
18 so that would be about 75 to 225 feet above ground  
19 level. And, this would, unfortunately, take the bird  
20 into the area of turbine sweep. And, then they fly in  
21 large circles, often greater than 100 meters, so let's  
22 say greater than 300 feet. So, they are actually  
23 circling around during a substantial part of the early  
24 breeding season within areas that would be within a

{SEC 2008-04} [Day 7] {03-19-09}

53

[WITNESS: Lloyd-Evans]

1 turbine sweep, if their territory were built close to  
2 or upon that.

3 The only other bird that I can find is  
4 actually our New Hampshire State Bird, the purple  
5 finch, and the purple finch does have some very similar  
6 reference, Wallace, 1939, and Rimmer, et al., 2001.

7 MR. ROTH: I have no further questions.

8 Thank you.

9 CHAIRMAN GETZ: Thank you.

10 MS. GEIGER: Mr. Chairman, would it be  
11 possible to ask one question on recross? It will be  
12 limited to the scope of redirect.

13 CHAIRMAN GETZ: Please proceed. Let's  
14 hear the question.

15 RECCROSS-EXAMINATION

16 BY MS. GEIGER:

17 Q. I believe, Mr. Lloyd-Evans, you made a statement, and  
18 correct me if I got this wrong, I thought I heard you  
19 say that you sought that you would expect to see a  
20 higher mortality rate at a site for raptors where you  
21 had observed a high pass rate in a pre-construction  
22 study. Is that correct? Is that your testimony?

23 MR. ROTH: I guess I -- I remember the  
24 testimony, I don't believe he said "pass rate". And, I  
{SEC 2008-04} [Day 7] {03-19-09}

54

[WITNESS: Lloyd-Evans]

1 think the question he was asked was "whether there was an  
2 abundance".

3 MS. GEIGER: Okay.

4 BY MS. GEIGER:

5 Q. Well, I'll take that as your testimony. Do you recall  
6 that?

7 A. I'm a little confused. But the only point that I was  
8 trying to make was that, if there is a higher abundance  
9 of raptors, a percentage of which, what was it in the  
10 Stantec study, 11 days at Owlhead Mountain, Fall 2007,  
11 55 percent of the raptors observed were below 125  
12 meters. So, that's saying that we would regard those

13 as being at risk. The only point I was trying to make  
14 was, if there are more raptors, then there would be  
15 more raptors at risk because of this low passage during  
16 migration.

17 Q. Okay. And, I'd like to have you read into the record  
18 this paragraph. It appears in the Revised Supplemental  
19 Testimony of Adam Gravel and Steven Pelletier. It's on  
20 Page 31 of 57. And, it begins at Line 7. Could you  
21 please read that into the record.

22 MR. ROTH: I object to this. It's  
23 already in the record, Mr. Chairman. We don't need him to  
24 read into it as well.

{SEC 2008-04} [Day 7] {03-19-09}

55

[WITNESS: Lloyd-Evans]

1 CHAIRMAN GETZ: Well, I might actually  
2 -- have you seen this? Let's see what this is first,  
3 before we go down this path. Do you know what she's  
4 speaking to, Mr. Roth?

5 MR. ROTH: No, I don't. But she asked  
6 for one question, and now she's on to two. And, she's  
7 asking him essentially to read somebody else's testimony  
8 that's already in the record, and I think that's  
9 unnecessary.

10 MS. GEIGER: I'm just asking him to --  
11 I'm asking him to read, this is obviously Mr. Gravel and  
12 Mr. Pelletier's supplemental prefiled, it's been marked as  
13 an exhibit in this case. And, so, it's in the record.  
14 And, I'm just recrossing the witness on an area that he  
15 just testified to. I'm going ask him to read that  
16 statement and see if he stands by his testimony.

17 CHAIRMAN GETZ: Well, I'd like to see

18 the statement, because we're trying to keep limits on the  
19 breadth of recross throughout the proceeding.

20 MS. GEIGER: I apologize, Mr. Chairman,  
21 but I believe this is directly related and confined to the  
22 scope of redirect.

23 CHAIRMAN GETZ: I'm sorry. What page?  
24 What line numbers, please?

{SEC 2008-04} [Day 7] {03-19-09}

56

[WITNESS: Lloyd-Evans]

1 MS. GEIGER: It's Page 31 of 57. This  
2 is the Revised Supplemental Testimony of Adam Gravel and  
3 Steve Pelletier. I apologize, I don't have an exhibit  
4 number for that.

5 CHAIRMAN GETZ: Well, I have it. But  
6 what line numbers on that?

7 MS. GEIGER: Seven through thirteen.

8 MR. ROTH: What page was that again?

9 MS. GEIGER: This is Page 31 of 57.

10 This is in the Revised Supplemental Testimony of Adam  
11 Gravel and Steven Pelletier. It's dated March 12, 2009.

12 MR. IACOPI NO: And, that's been marked  
13 as "Petitioner Number 50", 5-0, but I don't think we have  
14 another copy here.

15 CHAIRMAN GETZ: Well, I think we're just  
16 re-covering ground we've covered a couple of times during  
17 this proceeding. So, I'm going to sustain the objection.  
18 Is there anything else? To the extent that the parties  
19 want to argue these issues in brief or in closing  
20 arguments, we've been over these issues. Anything  
21 further? Anything further for these witnesses?

22 (No verbal response)

23 CHAIRMAN GETZ: Then, the witness is  
24 excused. Thank you very much.

{SEC 2008-04} [Day 7] {03-19-09}

57

[WITNESS: Lloyd-Evans]

1 WITNESS LLOYD-EVANS: Thank you very  
2 much, Mr. Chairman, members of the Committee.

3 CHAIRMAN GETZ: Let me get back to some  
4 procedural issues. Mr. Patch or Ms. Geiger, I didn't hear  
5 from you whether the Applicant had any objections, if I  
6 did, I don't recall, any objection to any of the  
7 particular exhibits being admitted into evidence?

8 MR. PATCH: No, Mr. Chairman. I don't  
9 think we have any objection to any of the exhibits.

10 CHAIRMAN GETZ: Okay. Well, let me  
11 address a couple of things that are pending then. With  
12 respect to the exhibit -- I believe it was identified as  
13 "Exhibit 56", but, in any event, the Gittel Economic  
14 Development Report, consistent with the ruling I made  
15 earlier in the proceeding, I'm going to admit that report  
16 into evidence, but note, of course, that the evidence was  
17 not provided -- the report was not provided under oath, it  
18 was not subject to cross-examination, so it does not merit  
19 the same weight as prefiled testimony that has been sworn  
20 and subject to cross-examination. So, we effectively deny  
21 the objection to admitting that into evidence.

22 With respect to the new information  
23 about what happened in New York with -- it sounds like  
24 some kind of mechanics lien from an electrical contractor,

{SEC 2008-04} [Day 7] {03-19-09}

58

1 I think there's been an offer from both parties to have

2 some further conversations about that. I'd like the  
3 parties to see if you can work something out on that.  
4 And, I'd like to get a little -- well, it sounds like at  
5 least Counsel for the Public was looking for a little  
6 better definition about that. So, let's have that  
7 process. And, I'll defer consideration on how to treat  
8 that, which then may or may not bring into question the  
9 issue of whether Counsel for the Public is going to seek  
10 to recall a witness on that issue.

11 Which then leaves the issue of the  
12 Application. And, I just want to try and get a little  
13 better feel for your position on that, Mr. Roth. You're  
14 asking to strike the information that's in the Application  
15 that is sworn, but not -- a witness was not presented in  
16 favor of it? Let me try and understand specifically how  
17 this would play out and how you would distinguish those  
18 portions of the Application that are required by statute  
19 and rules, versus, I guess, some different treatment of  
20 information that comes in as testimony?

21 MR. ROTH: Yes. I didn't say it was  
22 going to be easy. That the Application was signed by a  
23 "Walter Howard", the Chief Executive Officer of Granite  
24 Reliable Power. And, Mr. Howard was never offered as a

{SEC 2008-04} [Day 7] {03-19-09}

59

1 witness, he never submitted any direct testimony -- any  
2 direct prefiled testimony, and he was never present for  
3 any of the technical sessions. And, there are -- there is  
4 information in this document that is clearly necessary for  
5 the Application's completeness, and the completeness of  
6 the Application was determined back last August, I guess.

7 And, there is other information in this Application,  
8 which, you know, to look at it from the perspective of an  
9 investment banker, and perhaps law firms who put stuff up  
10 on their website, is really in the nature of  
11 advertisement, and should not necessarily be relied upon  
12 by the Committee.

13 But there is other information, and it's  
14 really, you know, it's kind of a salad bowl of stuff,  
15 really. There's other information in here that was  
16 clearly referenced and spoken of in the many witnesses'  
17 testimony that was put on by the Applicant. And, on those  
18 issues, you know, we focused -- the parties focused on the  
19 testimony, because that's the evidence in this case, by  
20 and large. And, you know, to the extent that there are  
21 other documents that is some evidence, you know, like the  
22 Gittell report, for example, that's not supported by an  
23 actual witness, it shouldn't be given very much weight.  
24 But, to the extent that there are assertions made in here

{SEC 2008-04} [Day 7] {03-19-09}

60

1 that are not backed up by sworn testimony and by witnesses  
2 who were cross-examined, witnesses who were subject to  
3 discovery, I submit that it's really kind of a, you know,  
4 a backdoor process to allow it in as somehow equivalent to  
5 that testimony and to that information and evidence.

6 CHAIRMAN GETZ: I guess what I'm  
7 struggling with, though, is, taking a look at the statute  
8 and taking a look at the rules, is there any -- is there  
9 an argument that what they have done is inconsistent with  
10 or in violation of what they're required to do by 162-H: 7  
11 or Chapter 300 of the rules? Because, if you look at Site

12 Section 301.03, "Contents of an application", it says that  
13 "Each application for a certificate of site and facility  
14 shall be signed and sworn to by the person or the  
15 executive officer of the association or the corporation  
16 making such application", and then it goes through a long  
17 list of requirements, which seems to be very consistent  
18 with what's in the statute.

19 So, I guess my bottom line question is,  
20 at first glance, it looks like they have done what they're  
21 required to do. So, how would I strike it from the record  
22 in this case, when they're complying with the statute and  
23 the rule?

24 MR. ROTH: The application form is one  
{SEC 2008-04} [Day 7] {03-19-09}

61

1 thing. And, the Applicant has the burden of establishing  
2 the requirements under the statute. And, the application  
3 form was deemed to be sufficient for its purposes, such as  
4 they were back in August. And, to the extent that it has  
5 any further evidentiary value, it seems to me it would be  
6 a question of whether the evidence presented, the  
7 testimony, the documents that were introduced, that were  
8 properly introduced, whether those things support what  
9 their case must be under 162-H:16. So, the Application  
10 itself is simply, at this point, you know, not to read to  
11 much of an impression about it, it is kind of a relic.  
12 And, is not really evidence of anything, other than that  
13 they filed the right form and it's still optional. But,  
14 as far as making their case and carry that burden under  
15 162-H:16, their responsibility are the standards under  
16 162-H:16 -- and they do that by filing prefiled testimony,

17 and I believe that that is required by the rules. And,  
18 the prefiled testimony and the cross-examination process  
19 is what makes that valid evidence for the Committee to  
20 consider and rely on.

21 CHAIRMAN GETZ: I guess I have two  
22 concerns. One is it seems to be we're talking, in some  
23 respects, in the abstract. You want to strike those  
24 things that they might rely on for carrying their burden

{SEC 2008-04} [Day 7] {03-19-09}

62

1 or that we might rely on in making a determination whether  
2 they did or did not carry their burden. So, it's -- I  
3 think there may be -- there really is some issues of  
4 specificity between what is in the testimony, what's in  
5 the Application. But don't we also get again to the issue  
6 of weight? Because this information here is sworn to,  
7 it's not subject to cross, or hasn't been subjected to  
8 cross. There's been a lot of discussion about it by -- in  
9 cross-examination, and I think various witnesses have been  
10 pointed to various pieces of the Application. And, there  
11 has been testimony by witnesses with respect to that.

12 So, Ms. Linowes, did you have something  
13 on this issue?

14 MS. LINOWES: Yes, Mr. Chairman.

15 MR. ROTH: If I could just, before you  
16 move onto a different argument, if you were to sort of  
17 just randomly go through this, the Application, and close  
18 your eyes and put your finger on a point, and I call  
19 Mr. Howard on the phone and say "Mr. Howard, do you swear  
20 to that point?" He would say "No, I couldn't swear to  
21 that. That, you know, I learned that from my operations

22 guy or I learned that from Pip Decker." And, I think  
23 Mr. Howard, you know, the fact that it's sworn to is  
24 fairly thin gravy. And, I guess, in terms of weight, and  
{SEC 2008-04} [Day 7] {03-19-09}

63

1 maybe that's the answer, that it really shouldn't be given  
2 much weight. It had its purpose at the beginning of the  
3 case. But the burden now is through the evidence. And,  
4 this Application, because it's not represented -- it's  
5 not -- it didn't come under, you know, subject to  
6 cross-examination and discovery, really, other than what  
7 was in the testimony, and also in here. It wouldn't be  
8 fair to the process, and really even necessary to the  
9 process, to include the many, many assertions made in the  
10 Application as the same kind of evidence that the  
11 testimony that went through the whole process should be  
12 accorded.

13 CHAIRMAN GETZ: Let me turn to the  
14 Applicant, before I hear from Ms. Linowes. Do you want  
15 some response on this issue?

16 MR. PATCH: Well, I think that maybe I'd  
17 reiterate a couple of things, Mr. Chairman, that I think  
18 you pointed out. And, first of all, in terms of the  
19 ingredients in the "salad bowl", as Mr. Roth referred to  
20 it, it's what the rules require. And, we followed the  
21 rules to the T, in terms of the order of the information  
22 that was presented. It's required by the statute, it's  
23 required by the rules, that's why it was done. It was  
24 recognized by the Committee or by an order of Commissioner

{SEC 2008-04} [Day 7] {03-19-09}

64

1 Burack, I guess, that the information was complete.

2 Mr. Roth had, and all of the  
3 intervenors, had a full and fair opportunity to do  
4 discovery on that Application. He had it on July 15th.  
5 And, any aspects of that that he was concerned about or  
6 wanted more information about, that was the basis for the  
7 discovery that he was able to do and he did do as part of  
8 this process.

9 I think, as you pointed out, his  
10 objection seems to be more in the abstract than being very  
11 specific, because it doesn't seem as though -- he's making  
12 sort of a general objection, he's not pointing to  
13 specifics in there that weren't covered. I think you'll  
14 actually find, if you look back through the testimony  
15 submitted in July and the supplemental testimony submitted  
16 and the testimony during the course of this proceeding,  
17 it's replete with references to the Application. So, I  
18 guess I just don't understand it. And, also, I mean, this  
19 body is not subject to the rules of evidence. This is an  
20 administrative body and under the provisions of its own  
21 rules, and also under the Administrative Procedures Act.  
22 You're not subject to the strict rules of evidence.

23 And, so, I think we did what we were  
24 required to do by the statute and by the rules, excuse me,  
{SEC 2008-04} [Day 7] {03-19-09}

65

1 and it seems as though, at this point in the proceeding,  
2 it just seems like a -- you know, it just doesn't seem as  
3 though it's the kind of objection that ought to be  
4 sustained.

GRP-DAY7.txt  
MR. ROTH: If I --

5

6

CHAIRMAN GETZ: Well, let me get Ms.

7

Linowes in here. She's been trying to get in.

8

MS. LINOWES: Thank you, Mr. Chairman.

9

With regard to specificity, there are at least three

10

examples which came forward that are in the Application,

11

and it's been submitted as testimony that -- or as

12

documents which the Applicant was unable to stand by and

13

testify to. Those were the two reports that -- involving

14

the impacts of wind energy facilities on real estate

15

values. Mr. Lyons and Mr. Decker both asserted under oath

16

that they were not real estate experts, and then proceeded

17

to somehow say those studies didn't apply to this project,

18

but they applied in the general. So, that it was very --

19

there was no way to draw any conclusions as to property

20

value impacts on the basis of that. And, the second was

21

the FAA Hazard Determination Reports, of which we

22

discovered there was a discrepancy between the height of

23

the turbines and that are proposed to be installed and the

24

height that was submitted to FAA. No one under oath was

{SEC 2008-04} [Day 7] {03-19-09}

66

1

able to give any -- an explanation as to why there was a

2

discrepancy, nor do I think those people were qualified to

3

do that. And, third, we had the System Impact Study,

4

which one would have expected an engineer to be on the

5

stand to talk about it. It was submitted as a document,

6

and I guess out there for us to just accept it was valid,

7

without any way of drawing any kind of conclusive

8

conversation or discussion regarding that.

9

So, I was left questioning "what are we

10 supposed to do with this information and what kind of  
11 weight could we possibly put to it, if there is no witness  
12 that could speak to it?" So, perhaps your idea of and  
13 your suggestion that they not be given the kind of weight  
14 that some of the other documents have been given because  
15 they were backed up by witnesses is the appropriate way.  
16 But I would like an opportunity to go through the entire  
17 document and make it -- point out those, in terms of an  
18 argument to the Committee, as supplemental information.

19 CHAIRMAN GETZ: Did you have one final  
20 thing on this, Mr. Roth?

21 MR. ROTH: I did. I would just point  
22 out that Site Rules 301.03(k) also requires that "Each  
23 application shall include prefiled testimony and exhibits  
24 supporting the application." So, the rules clearly

{SEC 2008-04} [Day 7] {03-19-09}

67

1 contemplate that the case is made on the prefiled  
2 testimony. And, that I think the process, with respect to  
3 the Application, suggest that it's kind of relevance is at  
4 the beginning of the case, and not at the end as evidence.  
5 While it is true that, you know, the rules of evidence  
6 don't apply, you know, right now we have, you know, a  
7 document with, you know, to quote Arlo Guthrie, with, you  
8 know, "circles and arrows and color glossy photos",  
9 that's, you know, 100 pages long, that's largely hearsay.  
10 And, as a matter of due process, you know, forget the  
11 rules of evidence, due process requires an opportunity to  
12 cross-examine, even in administrative proceedings. And,  
13 when Mr. Howard never showed up, we had no opportunity to  
14 cross-examine him. And, as a result, I think that, at the

15 very least, the Committee should make a finding that the  
16 allegations in the Application, to the extent not  
17 otherwise supported by testimony, are not to be given very  
18 much evidentiary weight.

19 CHAIRMAN GETZ: Okay. At this point,  
20 I'm going to take a recess. I'll take that, take this  
21 motion under advisement.

22 But I'll turn to Mr. Iacopino or the  
23 parties. Is there anything else that we need to address  
24 before we get to closing arguments at 3:00?

{SEC 2008-04} [Day 7] {03-19-09}

68

1 MS. GEIGER: Mr. Chairman I believe you  
2 had asked at the last session for the Applicant to provide  
3 you with some estimate as to when we'd be able to submit  
4 answers to the outstanding data requests that have been  
5 asked during the course of these proceedings. And, we do  
6 have draft answers. I have not had an opportunity to  
7 review them. But I would expect that we could file them  
8 with the Committee either tomorrow or no later than  
9 Monday, if that's acceptable?

10 CHAIRMAN GETZ: Okay. That would be  
11 fine. Though, there's one other thing I wanted to  
12 mention, and it doesn't appear that all the parties are  
13 here. In terms of briefs, I would just ask that, to the  
14 extent that there are any proposed conditions, if you  
15 could include those in a separate appendix, rather than  
16 piecemeal within the document, just so we can have all the  
17 proposed conditions in the case in one place.

18 Other issues?

19 (No verbal response)

20 CHAIRMAN GETZ: All right. Hearing  
21 nothing, then let's recess until -- Mr. Kimball, did you  
22 have something?

23 MR. KIMBALL: Yes. When will the briefs  
24 be due, assuming we're getting the outstanding data

{SEC 2008-04} [Day 7] {03-19-09}

69

1 requests on Monday?

2 CHAIRMAN GETZ: The brief date is  
3 Monday, March 30th, if I recall correctly, at 7:00 p.m.

4 MR. PATCH: Eastern Standard Time?

5 MR. HARRINGTON: No, Daylight. Five  
6 Greenwich Mean.

7 MS. GEIGER: And, Mr. Chairman?

8 CHAIRMAN GETZ: Ms. Geiger.

9 MS. GEIGER: Which would require asking  
10 when we might expect to see transcripts?

11 CHAIRMAN GETZ: All right. Well, let's  
12 go off the record now. I think that conversation is going  
13 to be an ongoing one. And, we'll recess until closings at  
14 3:00. Thank you, everyone.

15 (Whereupon the hearing was adjourned at  
16 1:33 p.m., and the hearing to reconvene  
17 today at 3:00 p.m. and to be contained  
18 within a separate transcript denoted as  
19 "Closing Statements".)

20

21

22

23

24

GRP-DAY7.txt  
{SEC 2008-04} [Day 7] {03-19-09}