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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

April 2, 2009 - 1:10 p.m.
Public Utilities Commission
21 South Fruit Street
Concord, New Hampshire
DAY 8
[REDACTED - For Public Use]

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

PRESENT: SITE EVALUATION COMMITTEE:
Thomas B. Getz, Chrmn. Public Utilities Commission
(Chairman of SEC Subcommittee - Presiding)
Donald Kent Dept. of Resources & Econ. Dev.
Glenn Normandeau, Director Fish & Game Department
Christopher Northrop N.H. Office of Energy & Planning
William Janelle Dept. of Transportation

* * *

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

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

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APPEARANCES:

Reptg. Granite Reliable Power, LLC,
and Noble Environmental Power:
Douglas L. Patch, Esq. (Orr & Reno)
Susan S. Geiger, Esq. (Orr & Reno)
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Reptg. Counsel for the Public:
Peter C. L. Roth, Esq.
Senior Assistant Atty. General
New Hampshire Dept. of Justice

Reptg. N.H. Wind Energy Association:
Farrell Seiler

Reptg. Industrial Wind Action Group:
Lisa Linowes

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WITNESS: CHRISTOPHER LOWE

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4	IWA-X-41	Summary sheet of liens filed in New York, within Clinton County, Franklin County and Wyoming County	PREMARKED
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6	IWA-X-42	Industrial Wind Action Group, Appendix A: Lien Documents	25
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12	Peti ti oner 51	PressRepublican.com article entitled "Wind-farm firm vows to clear liens" (03-28-09)	147
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14	PC-18	State of the Birds Report (2009) from the Dept. of the Interior	155

20 CHAIRMAN GETZ: Good afternoon.

21 MR. ROTH: Good morning, Mr. Chairman,
22 members of the Committee. Peter Roth, Counsel for the
23 Public.

24 CHAIRMAN GETZ: Good afternoon. And,
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1 I'll also note for the record that we have a quorum of the
2 Subcommittee present for the hearing this afternoon. I
3 take it the procedure would be for direct examination of
4 the witness, and followed by cross-examination from the
5 parties. Is there any issue with that approach?

6 MR. PATCH: We have probably maybe seven
7 or eight questions for direct, not a lot, but we would
8 have a few, if you would allow us to do that. Obviously,
9 some of the -- some of the information to be provided here
10 may be commercially sensitive information. I guess we'll
11 just have to wait until that point in time to flag it. We
12 don't anticipate that would come out on direct, but
13 there's a possibility, in response to questions on cross
14 or from the Committee, that that might come out.

15 CHAIRMAN GETZ: Okay. Anything else?

16 MR. ROTH: Yes, Mr. Chairman. There are
17 a couple of questions that I would ask that come from
18 confidential information that was provided to me in
19 discovery, as well as responses to questions that were
20 made during the confidential session of cross-examination
21 and testimony on March 16th, I believe.

22 CHAIRMAN GETZ: Okay.

23 MR. ROTH: And, so, there is a
24 possibility of some confidential information being

1 discussed. And, in addition, in terms of
2 cross-examination, I was -- I would ask for some latitude,
3 in terms of areas, and not simply -- and I mean sticking
4 to the subject matter of the liens and financial
5 capability and managerial expertise, that kind of stuff.
6 But, in terms of whether the questions stem strictly from
7 the answers based on the direct examination today, or
8 whether they come from previous cross-examination and
9 responses, or other financial information about the
10 Company, I guess I'm looking for some room to do that, and
11 not have to narrow the reach of my cross-examination to
12 the seven or eight questions that are asked on direct.

13 CHAIRMAN GETZ: Okay. Well, I'm not
14 quite sure where that is going, but we'll deal with the
15 issues when they arise. And, with respect to, if the
16 cross-examination, the questions themselves contain
17 confidential information or are going to elicit
18 confidential information, then, at that time we'll ask
19 that anyone who is not a party to this proceeding, or
20 hasn't signed a confidentiality agreement, would leave the
21 room for purposes of hearing those questions and answers.

22 So, is there anything else, before we
23 proceed?

24 (No verbal response)

[WITNESS: LOWE]

1 CHAIRMAN GETZ: Hearing nothing, then,
2 Mr. Patch.

3 MR. PATCH: Mr. Chairman, is it
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4 necessary to swear the witness in again or just to remind
5 him that he's under oath.

6 CHAIRMAN GETZ: I'd just remind him that
7 he's under oath.

8 MR. PATCH: Okay.

9 (Whereupon Christopher Lowe was recalled
10 to the stand, having been previously
11 sworn.)

12 CHRISTOPHER LOWE, Previously sworn
13 DIRECT EXAMINATION

14 BY MR. PATCH:

15 Q. Mr. Lowe, could you state your name again for the
16 record and tell the Committee what your position is
17 with the Company.

18 A. My name is Christopher Lowe. I'm Chief Financial
19 Officer of Noble Environmental Power.

20 Q. Okay. And, then, could you please explain what a
21 "mechanics' lien" is and the process by which they have
22 come to be placed on Noble's property in New York?

23 A. Okay.

24 Q. Actually, it's not Noble's property, as I understand
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

9

[WITNESS: LOWE]

1 it. It's project company property.

2 A. A "mechanics' lien" is a statutory right that a,
3 generally, a contractor or subcontractor or vendor to a
4 construction project, such as projects that we have in
5 New York, it's a right that they have to file a lien on
6 the property. You know, I understand that every state
7 has different lien law. I've become reasonably
8 familiar with New York lien law, because that's where

9 our projects are, and kind of can explain the process
10 there. It doesn't necessarily mean it's the same in
11 every state.

12 You know, a lien can be placed on a
13 property in the event that a contractor or vendor, you
14 know, appears at a courthouse in New York and asks, you
15 know, makes an affidavit and shows an invoice, and
16 requests that a lien be placed on the property,
17 predominantly, generally, I think, because they believe
18 they haven't been paid amounts which are due to them.
19 We don't get any notice prior to this. There's no
20 requirement for a vendor or a lien holder to give us
21 notice prior to this. It doesn't necessarily mean that
22 any lawsuit has been filed.

23 And, my understanding, you know, having
24 seen this in the project finance world for many years,
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10

[WITNESS: LOWE]

1 is it's a tool which is used by contractors, to either
2 preserve their rights, if they are concerned about
3 their receiving payment, or as a negotiation strategy.
4 There is also a time period. I believe there's a
5 limitation as to the time in which they can file, file
6 their liens. So, that's kind of the general process
7 that liens can appear on our property.

8 As I said, it's something which is, in
9 my experience, common in project financings. So, you
10 know, certainly, every project finance agreement we
11 have anticipates the possibility that mechanics' or
12 materialmen's liens may show up on a property.

13 Q. And, with that in mind, do the financing agreements

14 that the Company has with its lenders recognize the
15 possibility of such liens or permit the filing of them?
16 A. Yes. I mean, all of our -- all of our financing
17 agreements recognize the possibility of such liens.
18 It's really not up to the agreement to permit the
19 filing. But they do recognize the possibility. And,
20 generally, what a lender tries to do, which we're quite
21 comfortable with, is say, you know, liens of this
22 nature are generally permitted, as long as they don't
23 materially impact the operation of a project, and
24 either, you know, the project company has placed a bond
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11

[WITNESS: LOWE]

1 to basically bond off the lien until the dispute can be
2 resolved, or the project company is disputing it, and
3 has funds set aside in the project company cash
4 accounts to make -- make the payment due to the
5 contractor, if it turns out to be due. And, that's the
6 situation in our financing agreements.
7 Q. Has the filing of any of these liens, and I'm talking
8 now about the ones that have been filed in New York,
9 violated any of the covenants in those agreements, to
10 the best of your knowledge?
11 A. No. No, they haven't.
12 Q. Then, maybe it would be best if you explain to the
13 Committee the liens that have been filed in New York on
14 projects --

15 WITNESS LOWE: Can I just ask a
16 question? Is it okay for people to be taking photographs
17 of me?

18 CHAIRMAN GETZ: This is a public forum.
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19 WITNESS LOWE: Okay. I just don't know
20 what to -- I'm just not used to it. That's fine.

21 MR. ROTH: You're a celebrity.

22 WITNESS LOWE: Ah, that's right.

23 MR. PATCH: So, I mean, I'll mention the
24 question again.

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12

[WITNESS: LOWE]

1 WITNESS LOWE: Sorry.

2 BY MR. PATCH:

3 Q. Maybe, Mr. Lowe, if you could tell the Committee about
4 the liens on the project company property in New York.

5 A. Okay. I know there's been various press commentary on
6 liens in New York. So, maybe it's helpful to kind of
7 give an overview of the status of various liens in New
8 York. And, in one case, give the Committee some
9 background as to -- as to why it's there, because I
10 think it kind of helps people understand the process
11 around mechanics' liens.

12 If you recall, Noble has built two
13 projects in New York, or two project portfolios in New
14 York. You know, one we know as the "New York '07
15 Portfolio", one we know as the "New York '08
16 Portfolio". The New York '07 Portfolio, we have a
17 number of liens, which were placed before the end of
18 the construction period, in the amount of \$2 million.
19 We have placed a bond in the amount of a little more
20 than \$2 million to bond off those lines.

21 MS. LINOWES: Excuse me, Mr. Chairman.
22 Mr. Lowe, I'm just not clear where -- what he's talking
23 about. Which liens? In what county?

24 CHAIRMAN GETZ: Well, you'll have a
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13

[WITNESS: LOWE]

1 chance to cross-examine. We're in direct examination now.
2 And, when he's done with the direct examination, you'll
3 have the opportunity to follow up.

4 MS. LINOWES: Okay. Thank you.

5 BY THE WITNESS:

6 A. Okay. So, with respect to our projects, which we call
7 the "New York '07 Project Portfolio", which is really
8 in the Counties -- in Clinton County, actually,
9 predominantly in Clinton County. There was a set of
10 liens put by different vendors on the project, on parts
11 of the project, in the amount of \$2 million. As I
12 said, we have bonded off those liens. The interesting
13 thing, and the point to raise about those liens, is the
14 people who placed those liens on the project did not
15 have any contractual arrangement with Noble. They were
16 actually subcontractors to an entity which we had
17 contracted with to do work on our substation. So, we
18 had contracted with an entity called "KR". KR had gone
19 out and contracted with multiple different vendors to
20 do work. Unfortunately, KR filed bankruptcy, you know,
21 prior to completing work on the project, and the
22 subcontractors to KR decided this was the opportunity
23 to put the liens on Noble's project, company project.

24 We, for various reasons, we think it's a
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14

[WITNESS: LOWE]

1 good thing to bond off liens, because I think we can

2 talk about the repercussions of not doing that shortly.
3 But we have placed a bond for all those liens. That I
4 believe is in an amount higher than the total amount
5 that we ever owed KR. But, you know, it was easier
6 just to place the bond. And, then, when all the liens
7 are in on that project, which I think it is, you know,
8 we will move -- we will move through the courts to
9 resolve what is owed to each of the subcontractors of
10 KR. We will make any residual payment we have to KR.
11 And, hopefully, our lien bond will ultimately be
12 released. So, that's exactly an example of liens which
13 had nothing to do with our performance, but we took the
14 opportunity to bond it.

15 With respect to New York '08, the New
16 York '08 Portfolio, there's been reports of and the
17 existence of various liens on the project over the last
18 couple of weeks. And, in fact, some dating back a
19 little earlier. As of now, the only series of liens is
20 from a company called -- the only series of liens which
21 hasn't either been bonded or been removed is from a
22 company called "Aristeo". That lien is in the amount
23 of \$2.9 million. It is on, you know, various
24 properties. It is on various properties in the
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15

[WITNESS: LOWE]

1 Chateaugay Project. We have funds set aside to pay the
2 full amount we owe to Aristeo. Our lenders are aware
3 of this. Our tax equity investors are aware of it.
4 And, as we've indicated to our landowners, it is our
5 intention to bond off those liens. We don't have an
6 obligation to bond off those liens, but we think it's

7 the right thing to do. And, we are just intending to
8 take the funds that we've set aside to pay Aristeo and
9 use those monies to bond off those liens.

10 With respect to other liens which have
11 been reported being on Noble's property, I can report
12 that there were liens from a company called "Irby",
13 with whom we had a commercial dispute. We have now
14 settled with the company, Irby. We received a discount
15 with the company, the Company made a payment to them,
16 and they have removed their liens. And, if they
17 haven't yet been removed, they're certainly in the
18 process of being removed.

19 There were liens from a company called
20 "SPE Utility Contractors". They placed these liens in
21 January. To be honest, I'm not 100 percent sure why
22 they placed their liens. I do think they were
23 preserving their position, because we had always
24 indicated that they would be paid. They have been paid
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16

[WITNESS: LOWE]

1 the amount which was owed to them. And, I believe
2 those liens have been removed.

3 There is an engineering company called
4 "DMJM", which had a \$200,000 lien on the property -- on
5 various properties. We've settled with -- We've
6 settled the dispute we had with DMJM. And, I believe
7 those liens have been removed. And, if they haven't
8 been removed, we have the contractual arrangement with
9 DMJM that, based on the funds that we have paid to
10 them, or paid into escrow for them, those liens will be
11 removed.

12 And, there is another smaller lien
13 representing a dispute with an individual, who was a
14 full-time consultant to us, who left the employ of the
15 Company, and believes that he's owed an amount of
16 \$60,000, of which we're in the process of bonding over.
17 But that is the full sum total, to my knowledge, of
18 liens around any project in New York State.

19 BY MR. PATCH:

20 Q. And, maybe if you could describe for the Committee that
21 -- the total amount of the liens, how that relates to
22 the total costs of the projects in New York?

23 A. I mean, if we get to the only liens on New York '08,
24 which have been -- which have been unbonded and -- or
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17

[WITNESS: LOWE]

1 not removed, that's kind of the Aristeo 2.9 million.
2 And, that's less than 3 percent -- I'm sorry, less than
3 0.3 percent, 0.3 percent of the total cost of the
4 project in New York. And, as I said, you know, the
5 total cost of the project in New York, it includes
6 amounts to pay Aristeo, you know, if, as we prosecute
7 our dispute with Aristeo, it turns out that we have to.

8 Q. So, just to be clear, less than 3/10ths of one percent?

9 A. That's right.

10 Q. I mean, do you know what the total amount that Noble or
11 the project companies have invested in the State of New
12 York?

13 A. In the State of New York, to date, we probably invested
14 about, you know, 280 to \$300 million of equity. And,
15 we've raised financing totaling \$1.5 billion, including
16 our equity, for projects in New York.

- 17 Q. Now, you also have a project in Texas, correct?
- 18 A. That's right.
- 19 Q. Are there any liens that have been filed with regard to
- 20 that project?
- 21 A. To the best of my knowledge, there is none currently.
- 22 And, as far as I can recollect, there were none as we
- 23 kind of went through the end of construction and the
- 24 term conversion of that project as well.
- {SEC 2008-04} [DAY 8 - redacted] {04-02-09}

18

[WITNESS: LOWE]

- 1 MR. PATCH: Okay. The witness is
- 2 available for cross-examination.
- 3 CHAIRMAN GETZ: Okay. Any preference,
- 4 Mr. Roth or Ms. Linowes, who will go first?
- 5 MR. ROTH: She asked if I would go
- 6 first, and I'm happy to do that.
- 7 CHAIRMAN GETZ: Please proceed.
- 8 CROSS-EXAMINATION

- 9 BY MR. ROTH:
- 10 Q. Mr. Lowe, I'm looking at the Appendix A from the
- 11 Industrial Wind Action Group lien documents. And, it
- 12 looks like a indexed entry of various liens. Did you
- 13 see this document that was attached to her -- to Ms.
- 14 Linowes' pleading?
- 15 A. I have not seen that document.
- 16 Q. Okay. What it is is it looks like a list perhaps from
- 17 the Registry in New York, and I suppose Ms. Linowes can
- 18 speak to that more clearly, which lists a much greater
- 19 number of liens than what you've described. And, I'm
- 20 just trying to understand, for example, there's one
- 21 here -- please let me ask the question.

22 MR. PATCH: Mr. Chairman, could I ask if
23 he could provide a copy to the witness. It's kind of hard
24 for the witness to be asked questions about something he
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

19

[WITNESS: LOWE]

1 hasn't seen and doesn't have in front of him.

2 MR. ROTH: Do you have an extra copy?

3 (Ms. Linowes handing document to the
4 witness.)

5 MR. ROTH: Great. Thank you.

6 BY MR. ROTH:

7 Q. For example, on the back of the first page, or maybe
8 it's on the first page, the first line, it says
9 "December 19th 2007, lien in the amount of \$470,832 to
10 Zielinski Asphalt, LLC for Noble Ellenburg Windpark".

11 A. Uh-huh.

12 Q. That wasn't one that you just described in your direct
13 testimony, is it?

14 A. Yes, it was.

15 Q. Which one was it?

16 A. Zielinski Asphalt was a subcontractor to KR.

17 Q. Okay. So, Zielinski was a KR, and so Ellenburg is
18 which one, in '06?

19 A. Ellenburg is in the New York '07 Portfolio.

20 Q. Okay. So, is it your testimony then that any of the
21 liens, including the Fuller -- Steven Fuller
22 Excavating, at 297, Hynes Electric --

23 A. Yes.

24 Q. Any of them that relate to Ellenburg are KR?
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20

[WITNESS: LOWE]
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1 A. Well, I, obviously, haven't reviewed my document --
2 this document. But, as Ellenburg is a New York '07
3 project, and, to my understanding, the only liens
4 against the New York '07 project have to do with the KR
5 electric situation, they're all included in that
6 \$2 million amount, which I said, for KR liens. And,
7 maybe there's one other point I could make, if you
8 don't mind?

9 Q. Please.

10 A. And, I meant to say this at the beginning, because this
11 is one of the things which gets, you know, quite
12 confusing about lien law. I think, because a wind
13 project is, by its nature, kind of dispersed. So, you
14 have one windmill over here, one windmill over here, on
15 different patches of land. And, it's not, you know, a
16 sort of standing-in-one-place power plant. If you are
17 somebody like Aristeo, who believes they have a claim
18 for \$2.9 million, and want to file a lien, you actually
19 split that claim up into, I think I read in the press,
20 and I think, you know, Aristeo filed liens on 43
21 different pieces of property. So, you will get long
22 lists saying, you know, "lien filed", "lien filed",
23 but, essentially, it's all, you know, it's all, to my
24 mind, you know, that same Aristeo dispute.

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21

[WITNESS: LOWE]

1 Q. Okay.

2 A. So, I haven't reviewed this document, but I would feel
3 reasonably comfortable that, if you totaled all these
4 up and totaled what I gave in my testimony, your total
5 would come to about the same.

- 6 Q. Okay. Now, with respect to KR, KR was an electrical
7 contractor, correct?
- 8 A. Yes, they did work on a substation.
- 9 Q. Okay. And, "Zielinski Asphalt" doesn't sound like an
10 electrical contractor to me. Is there some reason that
11 KR would have contracted with Zielinski Asphalt?
- 12 A. Generally, our scope of work for substations would also
13 involve, you know, the kind of, this is not a financial
14 term, but, you know, the piece of land which the
15 substation sits on, and I suspect that, instead of
16 leaving it as grass, we had to asphalt it. And, we
17 probably had to build a parking place for when people
18 want to show up. So, I'm pretty sure that's why they
19 would have subcontracted with a company called
20 "Zielinski Asphalt".
- 21 Q. Okay. All right. Turning your attention back to the
22 list again, moving down to about the fifth position,
23 you'll see one there in Clinton, for a Noble Clinton
24 Windpark to Hynes Electrical Supply Company, in the
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

22

[WITNESS: LOWE]

- 1 amount of 23,000, and dated "January 8th, 2000" -- my
2 eyesight is power here -- "2008" perhaps?
- 3 A. Yes, that's correct.
- 4 Q. Is that also a KR lien or a KR --
- 5 A. I anticipate it is, but I can also check with my list.
6 Yes, that's -- that is a -- Hynes were a subcontractor
7 to KR.
- 8 Q. And, "Graymont Materials", moving further down the list
9 there, in the amount of \$87,859, is that also KR?
- 10 A. It's all in the same package. My notes suggest that

- 11 Graymont Materials were actually a subcontractor to
12 Zielinski Asphalt and to KR.
- 13 Q. All right.
- 14 A. So, I suspect they provided the asphalt.
- 15 Q. And, on the next page, about three-quarters of the way
16 down, there's one there dated "January 28th, 2008",
17 "Auburn Armature", also Ellenburg, is that -- is it
18 your testimony that's also KR?
- 19 A. That's right. That's my understanding as well.
- 20 Q. Okay. And, the next to the last one on the page there,
21 which is "Lakeland Concrete Products", in the amount of
22 \$104,830. That's also KR, is that your testimony?
- 23 A. Yes. That's also KR.
- 24 Q. Okay. Now, just so maybe it will save ourselves a
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23

[WITNESS: LOWE]

- 1 little bit of time here, is it your testimony that any
2 lien on these -- that any lien that may exist with
3 respect to Noble Ellenburg or Clinton, those would be
4 KR?
- 5 A. They're all related to the KR situation.
- 6 Q. Okay.
- 7 A. I believe that is -- is the case.
- 8 Q. And, so, for example on Page 5 of this list, there's a
9 lien there on behalf of the "International Brotherhood
10 of Electrical Workers Local 910 Pension Plan", \$157,068
11 and change from Noble Ellenburg?
- 12 A. Yes.
- 13 Q. That's another KR?
- 14 A. And, I presume they were the employees of KR, but I
15 don't know.

- 16 Q. So, that would be the electrical workers who were
17 contracted to do the work at the Ellenburg Windpark?
18 A. As I said, I would presume they are the employees of KR
19 or subcontractor of KR.
20 Q. Okay. Now, what about Altona? Are any of the Altona
21 liens, are those also KR?
22 A. Because Altona and some of the New York '07 projects
23 share a substation, I believe that some of the claims
24 filed by the KR contractors also tried to lien elements
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24

[WITNESS: LOWE]

- 1 of the Altona Project. But I'm quite happy to kind of
2 --
3 Q. Okay.
4 A. -- go through specific questions.
5 Q. We have one here on Page 8 for "Northern Fire Systems",
6 in the amount of \$24,000 on Altona?
7 A. Yes.
8 Q. That's a KR?
9 A. Yes, I'm not -- I mean, my -- just so you're clear, my
10 note on this says it was -- the dispute was lodged
11 against NEP and Altona. The lien was placed on the
12 same substation, which is the Ryan Road Substation.
13 And, it was certainly -- they are certainly also part
14 of the KR situation.
15 Q. Was Northern Fire contracted by KR or by Noble or --
16 A. To my knowledge, they were contracted by KR.
17 Q. All right.
18 A. I believe they were -- they weren't a Noble
19 subcontractor.

20 CHAIRMAN GETZ: Now, before your next
Page 20

21 question on this, Mr. Roth, let's just, for the purposes
22 of the record, this document that's -- your asking
23 questions from was compiled by the Industrial Wind Action
24 Group, and I think we need to give it an exhibit number.

{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

25

[WITNESS: LOWE]

1 So, whatever the next exhibit number for --

2 (Brief off-the-record discussion ensued
3 regarding marking of the exhibit.)

4 CHAIRMAN GETZ: All right. Back on the
5 record. For purposes of the cross-examination then, this
6 will be referred to as "IWA-X-42".

7 (The document, as described, was
8 herewith marked as Exhibit IWA-X-42 for
9 identification.)

10 CHAIRMAN GETZ: But I would also just
11 want to ask, Ms. Linowes, it's -- the first page of the
12 document shows that it's "Clinton County, New York",
13 "Indexing Name Search Indexed Entries". And, it says
14 these -- it says it was "photocopied March 20th". So, did
15 you prepare this document or what's the source of this
16 document?

17 MS. LINOWES: I have associates that are
18 in Franklin and Clinton County, they went to the
19 courthouse, and printed off copies of them, excuse me, and
20 emailed them to me.

21 CHAIRMAN GETZ: Okay. All right. Thank
22 you. Please continue.

23 MR. ROTH: Thank you.

24 BY MR. ROTH:

{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

[WITNESS: LOWE]

- 1 Q. I wanted to ask about the KR, you said they "went
2 bankrupt". When did they go bankrupt?
- 3 A. I actually can't recall the exact date of their
4 bankruptcy. But it was -- would have been around
5 either the end of 2007 or the start of 2008.
- 6 Q. Do you know where they filed their bankruptcy petition?
- 7 A. I do not. I suspect it's in New York.
- 8 Q. Would it surprise you to learn that I searched in the
9 Western District of New York, the Northern District of
10 New York, the Eastern District of New York, and the
11 Southern District of New York, and I found no
12 bankruptcy filing for any of those, in any of those
13 locations for KR Electric Supply?
- 14 A. Yes, it would, because I've been informed that they
15 filed bankruptcy. Maybe they just liquidated
16 themselves, I don't know.
- 17 Q. Okay. Have you seen anything like a bankruptcy notice?
- 18 A. I have not.
- 19 Q. Okay. So, it's possible they didn't, in fact, go
20 bankrupt, correct?
- 21 A. I have always been informed that they went bankrupt.
22 So, yes, I guess it's possible they didn't.
- 23 Q. And, I also checked in the District of Delaware just to
24 be sure, and they didn't file there either.
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

[WITNESS: LOWE]

- 1 A. Uh-huh.
- 2 Q. Do you typically require your contractors, like KR, to
3 be bonded?

- 4 A. Yes. We now have -- actually, we did then, have
5 procedures in place with respect to the
6 creditworthiness of our subcontractors. And, that
7 relates to, one, both credit checks and bonding, and
8 retainage on work. Now, in the case of KR, one of the
9 people who was on my finance team, you know, failed to
10 get the appropriate bond, which is a frustration to me.
11 I would add that he no longer works with us. In fact,
12 the two people involved no longer works with us. So,
13 they did not fully satisfy our credit policy back in
14 2007, when we entered into the contract with them.
15 We've, obviously, tightened that credit policy and the
16 enforcement of it. Because, at the end of the day,
17 just -- it's interesting to go through this list of
18 liens, but, at the end of the day, all of these liens
19 Noble has taken its equity and bonded. So, if the
20 court finally -- if a court finally determines this is
21 our responsibility, we put the money in a bond for
22 them. So, the equity is kind of out the door, from our
23 point of view.
- 24 Q. Okay. So, you're using equity, and not bank financing,
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

- 1 to satisfy these liens?
- 2 A. In this case, I believe -- well, you know, it gets into
3 a "funds are fungible" situation. But, in this case
4 this wasn't involved -- anticipated in the original
5 cost of a project, so I'm pretty sure we used equity.
- 6 Q. Okay. Is there anything in your credit agreements that
7 prohibits you from using borrowed funds to satisfy
8 things like the KR liens?

9 A. That's a -- That's an agreement-by-agreement question.
10 I think, you know, almost any payment we make from a
11 credit agreement we're required to get, you know, some
12 form of approval, either from the independent engineer
13 representing the banks or the administrative agent
14 themselves. I know, with respect to the New York '08
15 financing, that I believe they are comfortable with us
16 using funds we've set aside to pay Aristeo, to bond to
17 Aristeo. To be honest, I can't recall whether --
18 whether those funds were available for KR. It would
19 have been a slightly different situation, because, as I
20 said earlier, my understanding is that we ended up
21 bonding over an amount greater than the amount we owed
22 to KR. So, the bank would never have had funds set
23 aside in their construction budget to pay KR. So,
24 that's probably why we ended up using equity.
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

29

[WITNESS: LOWE]

1 Q. So, you used equity because the construction agreement
2 had essentially already funded paying KR, is that fair
3 to say?
4 A. I think that's one way you could -- one way you could
5 look at it.
6 Q. Okay.
7 A. And, I can't remember the exact breakdown, to be
8 honest.
9 Q. Would it have been a violation of the terms of your
10 credit agreement to use credit agreement borrowed funds
11 to pay KR a second time?
12 A. Well, we would never be paying KR a second time. I'm
13 not quite sure what your question is. I mean, yes, it

14 would be a violation of the credit agreement to pay KR
15 -- to pay a subcontractor twice. But I can't see why
16 we would ever do that.

17 Q. Okay. Just so I understand what happened, if the --
18 the Company, Noble, contracted with KR, correct?

19 A. Noble Constructors contracted with KR, yes.

20 Q. Okay. And, KR then went out and subcontracted with a
21 bunch of other people?

22 A. That's right.

23 Q. And, then, KR defaulted on its obligations to all of
24 these other people?

{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

30

[WITNESS: LOWE]

1 A. That's what I understand.

2 Q. Because they either went bankrupt or they went out of
3 business --

4 A. Yes.

5 Q. -- or they dissolved or something?

6 A. Yes.

7 Q. Did KR, prior to failing to pay all of those subs,
8 collect money from Noble or Noble Constructors for the
9 money due under the contract?

10 A. I believe we paid some of the amounts due to KR, but
11 probably not all of them.

12 Q. Okay. Do you know how much?

13 A. I'm not 100 percent sure. I don't know the exact
14 answer to that.

15 Q. Was it a substantial portion of what they were owed?

16 A. I honestly can't recall.

17 Q. Okay. I want to change --

18 A. I would -- I would suspect that we paid them for work

19 performed.

20 Q. Performed by whom?

21 A. Well, from our point of view, it's work performed by
22 KR, because that's who we're contracting with.

23 Q. Well, I guess I'm still a little confused. If you --
24 If all of the subcontractors performed under this KR
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

1 subcontract, and believe they're owed money, and you
2 have a completed substation, didn't KR, in fact,
3 perform -- KR or its subsidiaries perform everything
4 they were supposed to do?

5 A. No. Because, at the end of the day, as I recall, we
6 had to engage additional people, because KR -- KR
7 stopped performing, and either went bankrupt or
8 liquidated or went out of business, you know, while
9 they were in the process of completing the substation.
10 So, we actually, as I recall, we hired additional
11 engineers, who may themselves have subcontracted with
12 some of these parties to finish off the substation.

13 Q. Okay. I want to turn your attention now to a document
14 that was provided to us in discovery. It's marked
15 "confidential", and it's an organization chart. I just
16 want to ask a couple questions about it. I don't know
17 whether it was marked "confidential" in an excess of
18 caution or whether there is indeed confidential
19 information on there.

20 But the questions I would ask about this
21 document do not pertain to, for example, EIN numbers or
22 any of that kind of information that's on here, but
23 simply the organization. And, I'll show it to you --

24 CHAIRMAN GETZ: Well, just consult with
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

1 Mr. Patch to clarify if there's a dispute about whether
2 the information is confidential or not.

3 MR. PATCH: It's kind of hard to know
4 until you ask the question. And, I guess -- I'm sure Mr.
5 Lowe will speak up if he thinks any of the information he
6 has to provide in response to the question would be.

7 MR. ROTH: Okay.

8 CHAIRMAN GETZ: Okay. Well, let's --

9 MR. ROTH: I suspect we'll be able to --

10 CHAIRMAN GETZ: Let's slow down for a
11 second. What I want to do is minimize the amount of
12 information that we need to go off the record for for
13 confidentiality purposes. Because I don't want to have to
14 shuttle people in and out of the room. So, I would like
15 to ask, you know, Mr. Patch and Mr. Roth to take a minute
16 to talk between yourselves, so we can understand what the
17 questions and responses are going to be, --

18 MR. ROTH: Okay.

19 CHAIRMAN GETZ: -- so we can make this
20 go as smoothly as possible.

21 (Atty. Patch, Atty. Geiger and Atty.
22 Roth conferring.)

23 CHAIRMAN GETZ: Mr. Roth.

24 BY MR. ROTH:

{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

1 Q. Yes. Mr. Lowe, this is just really a clarification
2 question. You've been referring to a group of --

- 3 A. Yes.
- 4 Q. -- projects in New York as "New York '07" --
- 5 A. Uh-huh.
- 6 Q. -- and another group of projects as "New York '08".
- 7 A. Yes.
- 8 Q. Correct?
- 9 A. That's right.
- 10 Q. And, you identified "New York '07" as including, I
11 believe, Bliss, Clinton, and Ellenburg?
- 12 A. That's right.
- 13 Q. And, "New York '08" as being Altona, Chateaugay, and
14 Wethersfield?
- 15 A. That's right. And, that was how I identified them in
16 my supplemental testimony.
- 17 Q. And, I'm looking at this chart, and I see that Bliss,
18 Clinton, and Ellenburg are identified as "New York
19 '06"?
- 20 A. Well, they're identified as being -- they're identified
21 as being subsidiaries of a company which is called
22 "Noble Environmental Power 2006 Hold Co". This is one
23 of the great frustrations I have from a legal and kind
24 of corporate organization point of view. The "Noble
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

- 1 Environmental Power 2006 Hold Co" was named for the
2 year of its formation, which I believe was 2006. In
3 effect, the project started construction in 2007, and
4 finished in 2008. And, I'm trying to get the
5 corporation to adopt a convention which says "we name
6 our holding companies after the year in which we
7 started construction."

8 I have tried several times to get this
9 company renamed. But all my lawyers tell me that the
10 number of filings we would have to do and amendments to
11 various agreements makes it kind of not worth the
12 effort. So, that's why I've been careful, I tried to
13 be careful to refer to the "New York '07 Portfolio" and
14 the "New York '08 Portfolio", --

15 Q. All right.

16 A. -- rather than a corporate name.

17 Q. Fair enough. Thank you. Does the New York '07
18 Portfolio include Belmont?

19 A. No.

20 Q. Okay.

21 A. No. The new York '07 Portfolio does not include
22 Belmont.

23 Q. All right. So, you can see how I would be confused
24 with this?

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[WITNESS: LOWE]

1 A. I completely understand how you're confused. And,
2 believe me, you're not the first person.

3 Q. Okay.

4 A. I'm sure you won't be the last.

5 Q. All right. That's the only question --

6 A. One of these days I'll get this renamed.

7 Q. I just wanted to clarify what was '07 and what was --

8 A. You're right. It's a fair question. I remember that's
9 why I particularly did that in the supplemental
10 testimony, so people understood.

11 Q. Okay. Now, you indicated that there were disputes with
12 some of the contractors that you've been working to

13 resolve, correct?

14 A. Yes.

15 Q. Do you recall our conversation on March 20th, when I
16 asked you if you had any documentation of those
17 disputes?

18 A. Yes.

19 Q. And, didn't you answer that you "didn't think there
20 would be very much, but whatever you had you would send
21 to me"?

22 A. Yes, I did.

23 Q. And, you thought it would "pretty much be all the
24 contractors complaining, and not anything from Noble
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

1 explaining its side of the dispute." Is that a fair
2 paraphrasing of what you said?

3 A. I think that's right.

4 Q. Okay. And, did you, in fact, ever supply me with any
5 documentation of those disputes?

6 A. No, I did not.

7 Q. Okay. Do you think that if you -- well, let me ask you
8 this. Do you, in fact, have documentation explaining
9 Noble's side of the disputes?

10 A. I think you need to go from a -- if you go
11 contractor-by-contractor, and at some point here I'm
12 going to say "I want to move into", you know, if
13 there's an answer I give which is confidential, and
14 maybe I'll go as far as I can and, you know, --

15 Q. Well, I just want to know, do you have documentation
16 concerning those disputes?

17 A. Well, with respect to Aristeo, we have a memorandum

18 from our lawyers and our engineering adviser as to the
19 areas where we believe they performed inappropriately
20 under the contract. And, that is going to be the basis
21 for our litigation with that company.

22 Q. Okay. Do you have any correspondence from Noble or its
23 agents to Aristeo explaining your side of the dispute?

24 A. I do not believe I have that.

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[WITNESS: LOWE]

1 Q. Okay. Whether you have it or not, does it exist?

2 A. I think we have made clear to Aristeo that we believe
3 that they have -- I think we've made clear orally to
4 Aristeo that we have a claim in a certain amount. But
5 we have not laid out for them -- I don't believe we've
6 laid out for them in writing the basis of our claim.
7 However, I do believe they have been subject to a -- we
8 have a right under the contract with Aristeo to audit
9 their work and performance, and I believe they have
10 been subject to requests for information in that
11 respect.

12 Q. But you have not -- you don't have any, for example, a
13 letter from you or from somebody at Noble or from your
14 attorneys to Aristeo saying "We're not paying you
15 because, you know, A, B, C reasons for our
16 dissatisfaction with your performance"?

17 A. You know, I would want to speak very specifically to
18 the person dealing with that. But I do not believe
19 we've got to a point where we wanted to send exactly
20 that letter right now.

21 Q. Okay. Now, with respect to Irby, you said that you had
22 a "dispute with Irby", you told me that you had a

23 "commercial dispute with Irby".

24 A. Yes.

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[WITNESS: LOWE]

1 Q. Do you have any documentation explaining your side of
2 the dispute to Irby?

3 A. Well, we have settled that dispute with Irby. And, one
4 part of the settlement is that we -- we really aren't
5 supposed to discuss the terms of that dispute. I
6 believe we have indicated to Irby, I believe my
7 colleague indicated to Irby through e-mail, you know,
8 some of our frustrations with their performance. But
9 there has not been -- a lot of these discussions have
10 been handled orally. As I said, we settled with Irby,
11 and made a payment, and they have removed their liens.

12

13 Q. How long ago did Irby finish its performance?

14 A. Irby is an interesting company, because they -- they're
15 basically a materials supplier. So, I would have to
16 check the last date that they supplied materials.

17 Q. Do you --

18 A. And, you know, I think they also had certain
19 obligations with respect to kind of ongoing maintenance
20 of warehouses.

21 Q. Okay. Do you recall a conversation with me on the 20th
22 when you told me that they were a supplier of
23 electrical materials?

24 A. That's what I said, an equipment supplier, yes.

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[WITNESS: LOWE]

- 1 Q. Okay. And, did you have a contract with Stuart Irby
2 Company?
- 3 A. Yes.
- 4 Q. And, did Stuart Irby Company perform substantially in
5 accordance with that contract?
- 6 A. I'm pausing, because I'm trying to make sure I keep
7 this in public session and kind of answer your question
8 as well. I think, as I said, we've reached a
9 settlement with Irby, which resulted in a slight
10 discount to the amount we paid them. I think we have
11 -- we expressed certain concerns to Irby about the way
12 they priced and managed inventory, which they supplied
13 to us. And, you know, so, therefore, it's a kind of a,
14 you know, difference of opinion as to whether or not
15 they completely performed in compliance with their
16 contract. However, we've settled with them. And, you
17 know, that's, you know, it's kind of water under the
18 bridge.
- 19 Q. When did you settle with them? Was it after the press
20 reports came out about them?
- 21 A. It was -- We were in the process of trying to negotiate
22 with them prior to the press reports coming out about
23 them. And, we obviously settled after the press
24 reports came out about them.
- {SEC 2008-04} [DAY 8 - redacted] {04-02-09}

40

[WITNESS: LOWE]

- 1 Q. Now, when we spoke on the 20th, it was my understanding
2 from that conversation that you believe that Irby had
3 supplied too much of the material that you had -- that
4 was part of the contract, and you wished to return some
5 of it for essentially a refund on the contract, is that

6 correct?

7 A. That was one of our concerns with them, yes.

8 Q. And, with respect to the volume of the material that

9 they supplied, was that in accordance with the terms of

10 the contract?

11 A. I think that would be one of the areas where we have a

12 difference of opinion with them.

13 Q. So, it's your belief that they supplied more than what

14 the contract required?

15 A. As I said, that would be one of the areas I think we

16 have a difference of opinion. So, obviously, that's my

17 belief.

18 Q. So, that's a "yes"?

19 A. Yes.

20 Q. Okay. Thank you. Now, in your direct testimony, you

21 indicated that there was, or perhaps it was Mr. Wood,

22 in either the direct -- I guess it was on the

23 cross-examination on the 16th, you spoke -- or, you or

24 Mr. Wood spoke of renegotiating the price features of
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

1 the turbine supply agreements, do you recall that?

2 A. Yes.

3 Q. And, you also spoke, or perhaps Mr. Wood spoke, of

4 making conservative assumptions on your capital costs,

5 do you remember that?

6 A. Yes.

7 Q. Does making "conservative assumptions on capital costs"

8 compel you, at the end of the day, essentially, to

9 shave your costs by re-trading your agreements with

10 contractors and suppliers?

- 11 A. Well, my definition of "conservative assumption on
12 capital costs" would be a capital cost greater than you
13 anticipated spending. That's why it's conservative.
- 14 Q. Yes. But, if you have too much capital that you've
15 accounted for, it's going to cost you more than you
16 really need to spend, correct, if you can re-trade the
17 agreements and get discounts after-the-fact?
- 18 A. Well, one, it's not -- I never said any intention to
19 "re-trade any agreements", so that's kind of your
20 phrase. Secondly, I think one needs to understand a
21 significant difference between when one sits and
22 prepares a financial model, when one is estimating what
23 the capital costs of the project is going to be, and
24 then when one enters into contracts for the performance
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

- 1 of a project, you know, when one has entered into a
2 contract for the performance of a project, which
3 establishes, you know, the costs and the process for
4 constructing that project. They're very different
5 things. So, we're always going to run our financial
6 model from a conservative point of view. And, I still
7 can't quite see a link where what you estimated at the
8 beginning would cause you to do things at the end. I
9 can see it the other way around. If we kind of, you
10 know, low-balled everything, and then got to the end
11 and we had -- you know, and it cost more, then that's a
12 situation where you may be concerned about capital
13 costs.
- 14 Q. So, if your model says "borrow \$200 million", and you
15 go out in the marketplace and you contract for, let's

16 say, \$50 million worth of services. If you don't have
17 to borrow the complete \$200 million to do things, and
18 maybe my 50 million is not really the best point to use
19 as a -- to demonstrate this. But, if you have to
20 borrow -- if your credit facility gives you
21 \$200 million, that extra number of dollars of -- and
22 interest, and you go out and contract for the full 200,
23 then you have a certain capital cost, correct? That's
24 essentially 200, plus the interest that you pay on it?
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[WITNESS: LOWE]

1 But, if, in fact, can you respond to that? Does that
2 --
3 A. I'm not quite sure I understand the present question.
4 But the capital cost of the project is built up by the
5 estimates of the amount you intend to spend building
6 the project.
7 Q. Right. So, if you borrow 200 on that estimate, and
8 then you spend 200, you owe interest on the full 200,
9 correct? And, you have to repay the full 200?
10 A. That's -- If you borrowed \$200 million, you have to
11 repay the full \$200 million, yes.
12 Q. But, on your credit facilities, you don't get the \$200
13 million put in your pocket right up front, you draw
14 down on it, correct?
15 A. Right.
16 Q. And, if you make payments, you pay on what you actually
17 draw down, correct?
18 A. I pay interest -- If you mean interest, I pay interest
19 on the amounts I draw under the credit facilities. I
20 also pay commitment fees on the undrawn amount under

21 the facilities.
22 Q. Correct. I understand. So, if you spend -- if you
23 draw down the full 200, you're paying interest on the
24 full 200 that you drew down, correct?
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[WITNESS: LOWE]

1 A. That's right.
2 Q. But, if you only draw down 150, you're only paying
3 interest on the 150?
4 A. That's right.
5 Q. Okay. That's all I was -- that's the only point I was
6 trying to make. Is that, if you, instead of spending
7 200, you spend 150, you saved 50 somehow, you spend
8 less on interest, don't you?
9 A. That's right.
10 Q. Okay. Now, I'm looking at the agreements that you have
11 for financing, the '07 and '08 Portfolios. And, as I
12 understand it from your Securities & Exchange
13 Commission filing, the S-1, you had an agreement with
14 Dexia and you had an agreement with Citibank.
15 A. Uh-huh.
16 Q. And, then, there was another Royal Bank of Scotland,
17 Citizens Bank Letter of Credit Agreement, correct?
18 A. Yes. But, I mean, there's more detail to it than that.
19 Q. Okay. We'll get to that.
20 A. Yes.
21 Q. I'm just trying to get the general background.
22 A. That's kind of the basic. That's the basic structure,
23 yes.
24 Q. And, the Dexia Agreement was dated when?
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

[WITNESS: LOWE]

1 A. The Dexia Agreement would have been dated I believe
2 it's May or June 2007.

3 Q. Okay.

4 A. I mean, if you've got it, you'll remember better than
5 me. It may actually have been -- no, I think it's
6 June 2007.

7 Q. June 2007.

8 MR. PATCH: Mr. Chairman, I'm just
9 getting concerned that this is going a bit far afield if
10 we were here to deal with mechanics' liens. I don't know,
11 maybe he's going to tie it back, but I guess I don't see
12 how.

13 MR. ROTH: Oh, it's very simple,
14 actually. I mean, Mr. Lowe testified on direct
15 examination by Mr. Patch that this was all consistent with
16 their credit agreements. And, actually, I was glad that
17 he asked that question, so I didn't have to bring it in
18 out of nowhere. Because I wanted to ask him some
19 questions about the terms of the credit agreements, and
20 whether these liens are permitted liens and whether they
21 violate various terms of the credit agreements.

22 CHAIRMAN GETZ: Okay. Proceed.

23 BY MR. ROTH:

24 Q. Since they're so large, I didn't make a lot of copies
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[WITNESS: LOWE]

1 of them, but I do have a couple of them. Do you have
2 your own?

3 A. Not without pulling out all sorts of discs.

4 MR. ROTH: Mike looks thrilled.
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5 CHAIRMAN GETZ: Mr. Roth, are you going
6 to be delving into this substantially?

7 MR. ROTH: Other, yes, maybe five or six
8 places to ask about in here.

9 CHAIRMAN GETZ: Okay. Let's mark that
10 then as the next exhibit for Counsel for the Public.

11 MR. IACOPINO: I'll get you the number.

12 BY MR. ROTH:

13 Q. Okay. Mr. Lowe, is what you're looking at a copy of
14 the credit agreement that was executed by the Company
15 on or about June 22nd, 2007 with Dexia?

16 A. Yes.

17 Q. Okay. And, does this agreement cover the Bliss,
18 Clinton, and Ellenburg Projects?

19 A. Yes.

20 Q. And, is that what you call the "'07 Portfolio"?

21 A. Yes.

22 Q. Okay. Thank you. Now, what I did is I printed these
23 from the internet, so they have the internet
24 pagination. And, I don't know, and there's two sets of
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[WITNESS: LOWE]

1 page numbers in this document. There's the internet
2 printout at the bottom of each page, which says
3 "something of 221", and then there's the document
4 pagination. And, I will just offer that I printed
5 these from the Securities & Exchange Commission's Edgar
6 database, as the link, and you can see at the top
7 there's a web address where I obtained them.

8 If you turn to, Mr. Lowe, if you would
9 turn to Page, and hopefully my paralegal did, in fact,
Page 39

10 photocopy these on both sides, as she was supposed to,
11 the internet Page 86, which is the actual document
12 page 82.

13 A. Uh-huh.

14 Q. Is it fair to say that Paragraph 4.24 of the Dexia
15 Credit Agreement is -- can you tell me what that is?
16 What is that paragraph, if you can?

17 A. It's a representation -- It's a representation, 4.24,
18 made at the time of the financial closing data, with
19 respect to title and liens on the property.

20 Q. Okay. And, doesn't it say that the "collateral", and
21 that's a defined term, "is free and clear of all liens,
22 encumbrances, except permitted liens." Isn't that what
23 it says in Paragraph 4.24?

24 A. Yes.

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[WITNESS: LOWE]

1 Q. And, does the collateral include the leaseholds?

2 A. Yes.

3 Q. And, does the collateral include the material that's
4 installed there, the --

5 A. Yes.

6 Q. -- the turbines and the wiring and all that stuff?

7 A. Right.

8 Q. Okay. And, now, turning to Page 103 of the internet
9 printout, --

10 A. Yes.

11 Q. -- which is Page 101 of the Dexia Agreement, --

12 A. Yes.

13 Q. -- and Paragraph 5.19.

14 A. Yes.

- 15 Q. And, can you tell me what Paragraph 5.19 is?
16 A. I think I can actually shortcut this a little bit, if
17 you want?
18 Q. No I'd rather you just go --
19 A. Okay.
20 Q. -- just play along with me, okay?
21 A. Okay. 5.19 is the affirmative covenant of the
22 borrower, 5.19, where we warranty the title to the
23 property, subject only to permitted liens.
24 Q. Okay. So, this, in layman's terms, this says that you
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[WITNESS: LOWE]

- 1 have good and marketable title free of liens to the
2 collateral, basically, correct?
3 A. Yes.
4 Q. Okay. And, then, now turning --
5 A. Subject to permitted liens.
6 Q. Subject to permitted liens, understood.
7 A. Right.
8 Q. And, then, turning now to Page 108 of the credit
9 agreement, or it's actually 107 of the credit
10 agreement, 108 of the internet, Paragraph 6.2.
11 A. Uh-huh.
12 Q. And, can you tell me -- tell us what that is?
13 A. It's a negative covenant of the borrower, with respect
14 to not having permitted liens, any liens on the
15 project, other than permitted liens.
16 Q. Other than permitted liens, correct. Okay. Now,
17 turning to Page 124, internet Page 124, --
18 A. Uh-huh.
19 Q. -- Paragraph 8.8. What is Paragraph 8.8?

- 20 A. I think it's -- well, it looks like it's the "event of
21 default" section.
22 Q. Okay.
23 A. It might not be, wait a minute. You have to go back to
24 the beginning of Section 8. Yes, it's the list of
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[WITNESS: LOWE]

- 1 events of default.
2 Q. Okay. And, is Paragraph 8.8 that describe as
3 "defaults", "Breach of Terms of the Agreement",
4 correct?
5 A. Yes.
6 Q. And, --
7 A. There's obviously cure periods, but, yes.
8 Q. And, 8.8(a) refers to any "failure to observe or
9 perform the covenants in Article 6", correct?
10 A. That's right.
11 Q. And, Article 6, as we just saw, was what, your negative
12 covenant, correct?
13 A. That's right.
14 Q. And, then, Paragraph 8.8(e), which is on Page 125, says
15 that it's a default for "failure to perform or observe
16 any other covenant that is not otherwise specified here
17 and not cured within 45 days", is that correct?
18 A. That's right.
19 Q. So, is it your understanding, and with the caveat of
20 permitted liens, of course, that it would be a breach,
21 in the event of default under the Dexia Credit
22 Agreement, to have other than a permitted lien in place
23 on the property, correct?
24 A. That is a true statement.

[WITNESS: LOWE]

- 1 Q. All right. Thank you. Now, turning to Page 203 of the
2 printout, --
- 3 A. Yes.
- 4 Q. -- and then it rolls over to Page 204, particularly
5 with respect, on Paragraph -- on Page 204, it refers to
6 "(c)", and "Permitted Liens", includes "material men's,
7 mechanics', workers', repairmen's, employers" --
8 "employees or other like Liens arising in the ordinary
9 course of business or, prior to the final completion...
10 for amounts not yet due or for amounts being contested
11 in good faith and by appropriate proceedings." Is that
12 what your understanding of a "permitted lien" is?
- 13 A. That's the definition it says there of "permitted
14 liens".
- 15 Q. Okay. Now, isn't it true that what's being "contested
16 in good faith" and "by appropriate proceedings" is not
17 really defined anywhere in here, is it?
- 18 A. I don't believe it is, but --
- 19 Q. So, in fact, --

20 MR. PATCH: Mr. Roth, could I just stop
21 you for a minute. I'm having a hard time locating the
22 page that you referred to.

23 CHAIRMAN GETZ: Yes, I think he was --
24 you need to go Page 204 --

[WITNESS: LOWE]

- 1 MR. ROTH: Of the printout.
- 2 CHAIRMAN GETZ: -- of the printout, Page

3 46, to see the material men' s.
4 MR. PATCH: And, it was under "permitted
5 encumbrances", it has a 46 --
6 MR. ROTH: It's above it.
7 MR. PATCH: -- it has a 46 on that page?
8 MR. ROTH: Yes.
9 MR. PATCH: Okay.
10 MR. ROTH: Above that there's a "c", it
11 says "material men' s liens".
12 MR. PATCH: Yes. Okay. Thank you.
13 MR. IACOPI NO: Mr. Chairman, before we
14 go any further, I think this exhibit is going to be marked
15 as PC-16.
16 CHAIRMAN GETZ: Thank you.
17 (The document, as described previously,
18 was herewith marked as Exhibit PC-16
19 for identification.)
20 BY MR. ROTH:
21 Q. So, the question was, isn't it true that there's
22 nothing in here that defines what a "good faith
23 contest" or "appropriate proceedings" means, correct?
24 A. That's right.
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1 Q. And, so, the lender could, in its essential discretion,
2 decide that your disputes, such that they are, are not
3 in "good faith" or "by appropriate proceedings",
4 couldn't they?
5 A. Yes. But, as I've observed, in connection with the New
6 York '07 Portfolio, which are the KR liens, these do
7 not necessarily relate to disputes, because we don't

8 have any disputes with the subcontractors of KR.
9 Q. So, you don't have a "good faith contest" of it, do
10 you?
11 A. Well, --
12 Q. Or "appropriate proceedings".
13 A. Well, where I wanted to kind of try and shortcut this
14 for you a little bit is, because you would also see
15 that the definition of "permitted liens" I don't think
16 would quite include the total amount of the liens.
17 Because, as I think I said, the KR liens total about
18 \$2 million, and I don't think they fit in this
19 definition. So, this was a situation which all of the
20 lenders were aware of at the time of term conversion,
21 which is when we move from the construction loan to the
22 term loan. And, in fact, they were made aware of
23 during the construction period. And, I can't quite
24 remember the process by which we did it, but I believe
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[WITNESS: LOWE]

1 we amended the definition of "permitted liens" to
2 address the size and nature of the KR liens, --
3 Q. Okay.
4 A. -- so we didn't conflict with either covenants or the
5 event of default or the representation.
6 Q. Okay. So, then, --
7 A. And, unfortunately, the SEC, when you file an S-1,
8 doesn't require you, and no one thinks it's material to
9 file all amendments and updates to loan agreements.
10 Q. Okay. Thank you. And, that's good information. But
11 what that suggests to me is, at least at the time that
12 amendment was made, you were in default of your credit

13 agreement with the KR liens?

14 A. Actually, I --

15 Q. And, you amended your way around it.

16 A. Actually, I don't think -- one, I would observe that I
17 don't think I've ever seen a project finance agreement
18 which doesn't have some form of default at some stage.
19 Secondly, as I recall the situation with KR, at the
20 first time -- not all these liens show up at the same
21 time. So, as I recall what we did with KR, because I
22 will tell you, you know, these loans get more
23 monitoring by the agent bank, the independent engineer,
24 the agent bank's lawyers, who are Chadbourne & Parke,
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1 and our lawyer, who is Latham & Watkins.

2 But, I believe, when we had the first
3 liens, which did fall inside of the "permitted lien"
4 definition, we actually called up the agent and
5 observed to them that we thought we were going to have
6 to get an amendment or a waiver, I can't remember which
7 form we did it in, because we suspected more of these
8 would be showing up because we knew of the KR
9 situation. So, I think we ended up getting a waiver or
10 amendment, you know, before it showed up.

11 Now, my memory may be wrong, but it was
12 certainly a situation where we said to them "We see
13 this is happening. We're going to be bonding them.
14 Here's the money." And, it kind of worked through.
15 And, then, we all made representations about the lack
16 of default, when we entered into term conversion and
17 got legal opinions on that representation.

- 18 Q. Okay. And, the "lack of default" would have been
19 occasioned by having amended the underlying documents,
20 correct?
- 21 A. Or obtained a waiver.
- 22 Q. Okay.
- 23 A. And, I can't remember which form we did it in.
- 24 Q. Okay. Now, that was with respect to the '07 Portfolio
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- 1 --
- 2 A. Uh-huh.
- 3 Q. -- and the KR dispute or KR situation.
- 4 A. Uh-huh.
- 5 Q. Now, this is what I was going to ask you is, that must
6 -- you described earlier that that was occasioned by
7 somebody in your shop having failed to follow your
8 policies and get the appropriate bond from KR?
- 9 A. I think, when we went back and determined what
10 happened, yes.
- 11 Q. That's quite an expensive and nerve-rattling screw-up,
12 isn't it?
- 13 A. You know, I would say, on, you know, \$600 million
14 projects or \$625 million projects, as this one was, and
15 on \$800 plus million, as our other New York '08 Project
16 is, these are difficult, large, complicated financings,
17 and things happen. And, yes, it's a frustration, that
18 we had to deal with a bankrupt subcontractor, and, yes,
19 it resulted in liens, but think of it in the size
20 relative to the overall project. We're talking about a
21 number slightly -- a number in the \$2 million range, on
22 a \$625 million project.

23 Q. Now, and we'll make this a little bit shorter, but this
24 is the Citibank Credit Agreement.
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1 MR. ROTH: And, just to spare everybody
2 the agony of it --

3 CHAIRMAN GETZ: This will be marked as
4 "Counsel for the Public Exhibit Number 17".

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

8 BY MR. ROTH:

9 Q. This is also obtained from the Securities & Exchange
10 Commission website, and represents the -- I believe the
11 executed financing agreement between Noble and
12 Citibank. Is that your understanding?

13 A. That's correct.

14 Q. Okay. And, this pertains to the New York '08
15 Portfolio?

16 A. That's correct.

17 Q. And, that's Altona, Chateaugay, and Wethersfield?

18 A. That's correct.

19 Q. Okay. And, without going through it step-by-step, as
20 we did before, just to -- is it your understanding that
21 this document also contains similar representations and
22 warranties as did the Dexia Agreement?

23 A. That's correct. I believe the definition of "permitted
24 liens" is different, --
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1 Q. Okay.

- 2 A. -- because we didn't want to get caught with small
3 buckets like we did on the Dexia financing.
- 4 Q. Okay. And, we'll get to that. And, in addition, does
5 it have negative covenants, similar to what were in the
6 Dexia Agreement?
- 7 A. It does. However, I'm not going to testify that it's
8 the same, because, if you want me to go back and look
9 at the wording, I will, but we made very -- you know,
10 we tried to be reasonably careful, when we moved from
11 our New York '07 Portfolio, where we had lessons
12 learned, to New York '08, as to how we structured the
13 financing agreements.
- 14 Q. Okay. Well, then, I'll just offer for you that the
15 negative covenant number 6, 6.2, says you're not to
16 "create, assume, or suffer to exist any lien on
17 collateral or any project, except permitted liens."
- 18 A. That's right.
- 19 Q. Okay. And, similarly, you have a default provision,
20 "events of default" provision in Paragraph 7, or
21 Article 7. And, if you look at 7.8(c), it -- you would
22 be in default if you violated your negative covenants
23 or your representations and warranties, is that
24 correct?

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- 1 A. Yes.
- 2 Q. Okay. And, then, turning to the back, at Page 158 of
3 the printout, and 159, we have a definition of
4 "permitted liens".
- 5 A. Yes.
- 6 Q. Which, again, refers to the "good faith contest" and

- 7 "appropriate proceedings" language?
- 8 A. Yes.
- 9 Q. Okay. Now, this particular financing agreement, has
10 this been converted to term at this point?
- 11 A. I'm anticipating that's going to happen tomorrow.
- 12 Q. Okay. Wasn't that supposed to happen as of the 31st of
13 March?
- 14 A. Yes, it was.
- 15 Q. Okay. And, why didn't that happen?
- 16 A. Because, as I think you recall, from the structure of
17 this Agreement, GE, who are the tax equity partner on
18 here, you know, weren't ready to fund their tax equity
19 commitment on March 31st. I believe, and it's -- I
20 believe that, you know, GE are very comfortable that
21 they will be able to fund on Friday, and I believe the
22 banks are very comfortable that they will fund on
23 Friday.

24 Now, unfortunately, that means that
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- 1 technically we have an event of default on the facility
2 because GE didn't fund on time. I would, yes, I would
3 caveat that -- that's it. That's my answer.
- 4 Q. So, it is an event of default under this Agreement to
5 not convert to term by midnight on March 31st?
- 6 A. That's right.
- 7 Q. And, are you operating under a waiver at this point?
- 8 A. The banks have given us --
- 9 WITNESS LOWE: If we're going to go down
10 this set of questions, I prefer to do this in confidential
11 session.

12 CHAIRMAN GETZ: Well, let's hear the --
13 I mean, if there is a default, technical default under the
14 credit agreement, and if it's extended, is that the
15 confidential piece of information? Do we -- I guess, Mr.
16 Patch, --

17 BY THE WITNESS:

18 A. Well, I would observe that the banks -- that GE have
19 indicated that they will fund on Friday, and the banks
20 have indicated that they will waive the default on GE
21 funding.

22 BY MR. ROTH:

23 Q. Okay.

24 A. I suspect that neither the banks and GE want this
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1 discussed in a public forum, that's all.

2 Q. Okay. I'll take that answer, --

3 A. Yes.

4 Q. -- without probing that any further.

5 A. Okay, I mean --

6 Q. Okay. Did the liens or the lien situation or the
7 publicity surrounding the liens make the GE funding
8 more complicated?

9 A. No.

10 Q. Did the Altona mishap make the GE funding more
11 complicated?

12 A. No, not really.

13 Q. Okay.

14 A. I mean, GE have a set of obligations that they have to
15 make. And, quite frankly, I think people just missed
16 their timing in terms of, you know, getting their

- 17 internal approvals done.
- 18 Q. Okay. You had indicated to me on the 20th that one of
19 the projects, and I can't remember which one, went over
20 budget and passed the contingency by 10 percent.
- 21 A. Yes.
- 22 Q. Do you recall that? Which project was that?
- 23 A. Actually, I think, when we were talking about it, we
24 were talking about the New York '08 Portfolio in
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[WITNESS: LOWE]

- 1 general. I don't think I was referring to a specific
2 project.
- 3 Q. Okay. So, the '08 Portfolio?
- 4 A. Uh-huh. That's right.
- 5 Q. Okay. All right. And, how much was the '08
6 Portfolio's cost?
- 7 A. Okay. This I would -- if you want to go into cost
8 overrun breakdowns and the numbers around that, I would
9 suggest that that's a confidential session.
- 10 Q. Okay. Well, then, I'll hold off on that, all right,
11 for now. Oh, here's -- Do the Dexia and the Citi
12 Agreements have cross-defaults in them?
- 13 A. No. Well, if you mean to each other? No.
- 14 Q. No. Is there a cross-default provision within the Citi
15 Agreement?
- 16 A. Well, cross-default to what?
- 17 Q. Well, no, you tell me. I'm trying to find it.
- 18 A. I don't think there's a cross -- there's no
19 cross-default in the project financing to anything
20 outside the scope of the project financing.
- 21 Q. Okay. Does the Citi Agreements have, in addition to

22 it, is there a letter of credit, a separate letter of
23 credit agreement?

24 A. Well, I would consider that all part of the same
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1 project financing. So, I would expect there are
2 cross-defaults between that.

3 Q. Between them.

4 A. That's why I phrased it as "within the project".

5 Q. So, in essence, if you're in default on the Citi
6 Agreement, you're in default on all the other related
7 agreements to the Citi Agreement?

8 A. The letter of credit agreement isn't really a separate
9 agreement. It's all part of the same package. Which
10 is why I said, when you kind of listed out the
11 agreements in the beginning, it was a little bit more
12 complicated than that, but you wanted to get the basic
13 idea. It should be thought of as one financing.

14 Q. Does the financing agreement document dated June 30th,
15 2008 include in it the letter of credit facility or is
16 that a separate document? I don't know the answer, and
17 I'm just trying to --

18 A. No, I know. And, I'm trying to remind myself of the
19 answer. I'm pretty sure it's a separate -- its a
20 document, but it's all interrelated.

21 Q. Okay.

22 A. It's all interrelated.

23 Q. Fair enough.

24 A. And, there is a reason as to why it's a separate
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- 1 agreement, which relates to the difficulties in
2 financing markets at the end of last year or the middle
3 of last year.
- 4 Q. Okay. Now, in your term conversion that you're trying
5 to work through now to close, and you feel like you're
6 wasting your time here when you should be home working
7 on that, I suppose.
- 8 A. I don't think I ever said that.
- 9 Q. Maybe you're having more fun here?
- 10 A. I've got a good team working on it, so --
- 11 Q. And, was resolving the liens situation a condition to
12 the term conversion?
- 13 A. No. I mean, you, obviously, read the documents. You
14 know, at term conversion, we have to make a
15 representation about permitted liens in the bank
16 agreement, and, interestingly, the tax equity agreement
17 picks up the same definition of "permitted liens" and
18 expands on it. You know, all our capital providers are
19 completely aware of the series of liens we have. You
20 know, we've explained to them what we were doing. And,
21 they are quite comfortable with it.
- 22 Q. Okay.
- 23 A. And, you know, these facilities are designed to include
24 this concept.

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- 1 MR. ROTH: All right. I'd like to go
2 into a confidential session.
- 3 CHAIRMAN GETZ: About how much inquiry
4 do you have along those lines?

5 MR. ROTH: It's not that much, really.

6 CHAIRMAN GETZ: Well, I'd like to move
7 along with other questions first, and then get to that at
8 the end. Ms. Linowes, are you prepared to begin your
9 cross now?

10 MS. LINOWES: I am, Mr. Chairman.

11 CHAIRMAN GETZ: Do you have issues that
12 are going to involve confidential information?

13 MS. LINOWES: I don't think so. I think
14 all my information is in the public record.

15 CHAIRMAN GETZ: Okay. Mr. Seiler, I'll
16 note for the record, is here. Do you have any questions
17 for the witness at all?

18 MR. SEILER: I'll have no questions.

19 CHAIRMAN GETZ: Okay.

20 MR. ROTH: And, Mr. Chairman, I do have
21 other questions that will follow the confidential
22 questions that would be not confidential. But I don't
23 really want to interrupt the flow. There is a, you know,
24 a --

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1 CHAIRMAN GETZ: A method.

2 MR. ROTH: -- a method to my madness.

3 FROM THE FLOOR: We're fine.

4 CHAIRMAN GETZ: Go ahead. Let's, as
5 long as you don't have any confidential information, then,
6 Ms. Linowes, then it may have more coherence to the
7 inquiry then, if we allow the confidential inquiry, and
8 then come back onto the record. So, at this point, then I
9 would ask anyone who's not a party to the proceeding, or

10 who hasn't signed a confidentiality agreement, to please
11 leave the room for, you expect about ten or --

12 MR. ROTH: Ten minutes.

13 CHAIRMAN GETZ: Okay. Thank you,
14 everyone.

15 (Whereupon Pages 67 through 92 of the
16 hearing transcript is contained under
17 separate cover designated as
"Confidential & Proprietary".)

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[WITNESS: LOWE]

1 [PUBLIC SESSION RESUMES]

2 CHAIRMAN GETZ: Mr. Roth, you have how
3 much more?

4 MR. ROTH: Five, ten minutes max.

5 CHAIRMAN GETZ: Ms. Linowes, do have any
6 estimation of the length of your cross-examination?

7 MS. LINOWES: I would estimate maybe 40
8 minutes, maybe, probably less than that.

9 CHAIRMAN GETZ: Okay. Let's continue
10 with Mr. Roth please.

11 BY MR. ROTH:

12 Q. Now, I'm hoping this doesn't fall in the realm of
13 confidential, because it was asked in a confidential
14 session before. But isn't it true that the Project

15 expects to receive from the ITC credit, and am I
16 getting anywhere near confidential?
17 A. Which project are you talking about?
18 Q. This project.
19 A. Okay.
20 Q. New Hampshire.
21 A. Okay. So, back to Granite. Okay.
22 Q. A certain amount from the ITC, and you testified as to
23 a certain amount --
24 A. Yes.
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1 Q. -- that you would anticipate getting from ITC?
2 A. Yes.
3 Q. Okay. And, the "ITC" is the Stimulus Package money?
4 A. Right.
5 Q. And, are comfortable saying what that number is? I can
6 tell you what the number you said was, but it was -- I
7 just want to be careful saying it publicly.
8 A. Yes, I just want to check.

9 MR. PATCH: Mr. Chairman, before he
10 answers, I mean, is this mechanics' liens again? I'm
11 sorry to keep bringing this up.

12 MR. ROTH: Yes.

13 MR. PATCH: But, I mean, we're talking
14 about the New Hampshire Project and the amount for the New
15 Hampshire Project, but the mechanics' liens are in New
16 York. So, I'm just trying to understand the relevance.

17 CHAIRMAN GETZ: I've been following the
18 links so far, Mr. Roth. This one, I'm not sure where this
19 is going. Can you --

20 MR. ROTH: Well, I'll explain. The ITC
21 is a payment that, of a significant amount of equity, that
22 comes to the project once construction is completed, as I
23 understand it.

24 CHAIRMAN GETZ: And "ITC" being the
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1 "Investment Tax Credit"?

2 MR. ROTH: That's correct. And, under
3 the Stimulus Package, it can be either in a, you know,
4 saleable tax credits or in a lump-sum, one-time payment.
5 And, I believe that there was testimony that this came in
6 as a -- or would be expected as a one-time lump-sum
7 payment of equity, after construction. And, so, the
8 questions that I want to ask pertain to budgeting and
9 paying vendors during the period of construction, in
10 anticipation of the receipt of the ITC.

11 CHAIRMAN GETZ: So, the argument is,
12 based on the fact that mechanics' liens were applied in
13 the State of New York on projects there, subject to
14 disputes, in the event of a -- what appears to be a
15 bankrupt contractor, and the subcontractor is going unpaid
16 and filing liens, and somehow this may all replay itself
17 in New Hampshire?

18 MR. ROTH: Something like that, yes.

19 MR. PATCH: It seems to me, Mr. Chairman
20 --

21 MR. ROTH: I think, if you, at this
22 point, I don't think it's fair to make any conclusions
23 about the validity of the statements that were made in the
24 earlier cross-examination with respect to ruling on

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1 whether I'm, you know, going too far afield here. I mean,
2 obviously, the Committee will make its own rulings on
3 whether it believes, you know, what story it believes
4 about all of this. But I think it's fair to attempt to
5 see how well the New York methodology or circumstances
6 extrapolate here.

7 CHAIRMAN GETZ: Your argument being that
8 what is going on in New York may constitute a modus
9 operandi of this company that may repeat itself here, is
10 that --

11 MR. ROTH: Something like that, yes.

12 MR. PATCH: Sounds like an argument for
13 the post hearing brief, Mr. Chairman, not questions of the
14 witness.

15 MR. ROTH: Well, I think there's some
16 factual issues to be asked about it, so I want him to get
17 there, and I don't have very much to go on with it, I
18 mean, in terms of that I don't have very many questions to
19 ask about it.

20 CHAIRMAN GETZ: Well, I think there's --
21 -- I think, following up on the ITC issue, is relevant.
22 So, let's go with that.

23 MR. ROTH: All right. Thank you.

24 BY MR. ROTH:

{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

[WITNESS: LOWE]

1 Q. So, getting back to the question, does the project,
2 that is Granite Reliable, is it your expectation that,
3 if you get constructed before the deadline, that you'll

- 4 be looking for a ITC payment?
- 5 A. Well, as we testified in the financing session, there's
6 a number of elements which are open to us in the
7 Stimulus Package, which will aid the financing of this
8 Project. And, we don't need to, you know, re-cover all
9 those different points. In the event that we go the
10 ITC route, what the ITC does is it provides a tax
11 credit at the completion of a project. That tax credit
12 can either be monetized by an investor as a tax base or
13 we believe it could be able to be converted into a
14 grant, which is a grant money from the federal
15 government. It's not an equity investment by anybody.
16 It's grant money or either monetization of the tax
17 credit. So, "yes", I think is the answer.
- 18 Q. So, do you expect that the Project would look for the
19 grant money? And, if so, how much would it be?
- 20 A. I mean, we, in some of the models we provided, and we
21 provided to your consultant, we were looking at grant
22 money, based on our estimate, in the range of
23 \$70 million.
- 24 Q. Okay. And, during your previous testimony, you
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[WITNESS: LOWE]

- 1 indicated that your estimates on the budget and the
2 contingencies, I think that it's fair to say you
3 believe they would be conservative estimates?
- 4 A. That's right.
- 5 Q. Okay. And, do you see any possibility that you would
6 be shaving costs to either recover on the conservatism
7 or to bridge costs or expenses to the ITC payment in
8 New Hampshire?

9 A. I'm not quite sure I understand the question. I don't
10 think I'd be operating to "shave costs". But what do
11 you mean by doing something to bridge to the ITC? I'm
12 not quite sure.

13 Q. Well, let's say you hire a New Hampshire contractor to
14 come in and bring truckloads of gravel or run an
15 excavator, and the Project, Granite Reliable, owes that
16 contractor \$500,000. Isn't it possible that, instead
17 of paying them the \$500,000 in the last month of their
18 work, you might say "well, the Project's going to be
19 completed. Why don't we wait until we get to the ITC
20 and pay him out of that?"

21 A. I mean, I think, provided people have performed
22 according to their contracts, we're going to pay. I
23 also don't think any bank or structured loan is going
24 to, you know, set itself up that a project only gets
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[WITNESS: LOWE]

1 completed if the ITC shows up, which is kind of what
2 your question is. Okay? Any bank construction loan is
3 going to want to demonstrate that, from the lender's
4 point of view, there's sufficient funds in the project
5 to complete the project, and make all payments on the
6 project. That's how our New York '07 one was set up,
7 that's how Texas was set up, that's how New York '08
8 was set up. And, I'm pretty sure that that's how, you
9 know, that's how New Hampshire -- Granite Reliable will
10 be set up.

11 I also would suggest that there's
12 probably going to be a time period. I'd be very
13 surprised if, when the government publishes its

14 regulations on the grant, that, you know, you're going
15 to be able to get your ITC and get a grant, you know,
16 the same day you complete the project. I don't think
17 that's going to happen. I think what's going to happen
18 is construction lenders are going to want to ensure
19 everything is fully funded to build the project. I
20 suspect you'll put the project into service. I suspect
21 you'll operate for a period of time, not quite sure
22 what, but it will be operated for a period of time.
23 And, then, the construction loan will be repaid by a
24 combination of the proceeds of the grant and term debt,
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[WITNESS: LOWE]

1 and potentially some of it with tax equity.
2 Q. But, if you were, for example, in New Hampshire, to max
3 out the construction loan, and you've still got 500
4 that you owe to Joe's Excavator, Joe's Excavating
5 Company, wouldn't it be possible to say "well, we'll
6 pay Joe when the ITC money comes in", rather than to
7 have Noble reach into its equity -- its own equity
8 pocket?
9 A. As I said, I don't think our lenders would allow it,
10 for a start. And, secondly, I think Noble has, you
11 know, reached into its own pocket for equity on a
12 number of occasions. And, I think that is, you know,
13 how we would anticipate managing this project as well.
14 Q. But, in those previous projects, you didn't have an ITC
15 out there, free money, essentially, from the federal
16 government?
17 A. Well, that's kind of irrelevant for this analysis,
18 because each -- each project in this sector gets done

19 by the same structure. You have a construction loan
20 and you have a series of take-outs. Before the ITC
21 structure came about, you had term debt and tax equity.
22 Construction lender always wants, you know, all money
23 in to complete the project, then it gets taken out.
24 All the ITC structure does is it provides another form
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[WITNESS: LOWE]

1 of take-out. The fact that it is, as you say, "free
2 money", is I don't think relevant to this analysis.
3 It's just another form of take-out. Construction
4 lender is going to want to see everything is kind of
5 paid -- paid to construct the project.
6 Q. Well, you just described -- you described earlier how
7 you've got both Dexia and Citi were willing to
8 essentially paper over and gloss over \$9 million worth
9 of unpaid liens.
10 A. One, we don't have \$9 million worth of liens. I
11 observed that was a maximum number, when you took
12 everything, including stuff we've now settled. So,
13 that's not the number. With Dexia, as you know, it was
14 2 million. And, as I also observed, we did pay the
15 money. We bonded it. That money has gone into the
16 project and it's been used for bonds. With respect to
17 the one outstanding lien we'll have on New York '08,
18 which is the Aristeo number, which is 2.9 million,
19 we've demonstrated, and I know because I was kind of
20 doing it over the last few days, or having my team do
21 it, demonstrated to our tax equity provider and to our
22 debt provider that the monies are available in the
23 project to make that payment.

24 Q. Now, in your testimony on cross back on the 16th, you,
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[WITNESS: LOWE]

1 I believe it was you, it could have been Mr. Wood, and
2 forgive me if I -- I certainly don't remember which of
3 you said it. But you indicated that the banks, when
4 you go to finance this Project, that, because of the
5 financial situation, the banks are going to pick and
6 choose among the best projects to lend to, do you
7 remember that?

8 A. Yes.

9 Q. How do you think that these lien disputes in New York
10 and the cost overruns will factor into this Project's
11 ranking, in terms of getting that kind of
12 competitiveness in the lending business?

13 A. I think -- I think the lien disputes make absolutely no
14 difference to the way bank lenders or tax equity look
15 at this. As I said at the beginning, they structure
16 their agreements because they know this happens. In
17 fact, a direct quote from one of my banks earlier this
18 week was "if you" -- you know, "if you believe a vendor
19 dispute with Aristeo, we're happy to give you time, you
20 know, to proceed with that dispute, provided that you
21 set aside the funds." We've done that, as I said. I
22 think it makes no difference.

23 Q. Okay.

24 A. I think, with respect to cost overruns, I think, as
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[WITNESS: LOWE]

1 Noble has performed exactly as a lender would expect us

2 to perform in this situation. You know, we've
3 basically gone out of our way to ensure that we do the
4 right thing for a project, I think it probably actually
5 helps us in the future projects. And, the third thing
6 which helps us is both our New York '07 Project and New
7 York '08 Project have won Project Finance Deal of the
8 Year Awards in the renewable sector. And, I think that
9 kind of helps us, when we go to -- when we go to banks
10 looking for money, because they have, you know, they
11 have participated in award-winning projects in the
12 past, and I think they will be likely to participate in
13 the future.

14 Q. And, you earlier testified that there were no liens on
15 your projects in Texas, is that correct?

16 A. That's to the best of my knowledge, yes.

17 Q. And, Noble constructed a project in Michigan. Were
18 there liens there?

19 A. Noble did, Noble commenced the construction of a
20 project in Michigan, which we subsequently sold. And,
21 during the course of construction, to my knowledge,
22 during the construction process, when we were managing
23 it, there were no liens. Can't speak to what happened
24 after we sold it.

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[WITNESS: LOWE]

1 Q. Okay. And, do you know whether the Lempster Project in
2 New Hampshire generated any liens?

3 A. I have no idea.

4 Q. Would you be surprised to learn that there weren't any?

5 A. I have no idea. I mean, I don't know.

6 Q. Okay.

7 A. I mean -- So, I'm not sure if I'm surprised or not. I
8 also don't know what New Hampshire lien law is, so -- I
9 have noticed that New York lien law seems to be
10 interesting.

11 Q. Is it something about New Yorkers?

12 A. I'm not going to say anything about -- we like New
13 York. We've invested more and built more windparks in
14 New York than anybody else.

15 Q. Do you have, other than Texas and New York, and the one
16 that you partially did in Michigan, are there other
17 projects that Noble has constructed?

18 A. No.

19 Q. Okay. Now, when you were here before, you were asked
20 about whether -- whether people in New Hampshire should
21 be concerned about Noble's track record in New York,
22 and you said "Yes. And, you know, I do not believe the
23 people of New Hampshire, or, indeed any other state
24 where Noble does business, should be concerned about
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[WITNESS: LOWE]

1 our track record. I believe, in the State of New York,
2 you know, we continue to have good relationships with
3 the host communities where our plants operate." Now,
4 obviously, you said this before all this lien stuff
5 came out.

6 A. Uh-huh.

7 Q. Do you think that you would change your testimony at
8 all, in light of all the liens that have been revealed?

9 A. No.

10 Q. Okay.

11 A. And, you know, I would tell you for why, because we are

GRP-DAY8.txt

12 -- we have gone over and above, you know, if necessary,
13 to bond off liens for the benefit of our landowners.

14 MR. ROTH: Okay. Thank you. That's all
15 I have.

16 CHAIRMAN GETZ: Okay. I think this
17 would be a good time for a recess. Let's take about 15
18 minutes.

19 (Whereupon a recess was taken at 3:18
20 p.m. and the hearing reconvened at 3:44
21 p.m.)

22 CHAIRMAN GETZ: Okay. We're back on the
23 record. And, we will turn to cross by Ms. Linowes.

24 MS. LINOWES: Thank you, Mr. Chairman.
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[WITNESS: LOWE]

1 I have one exhibit that I'd like to distribute, if I may?

2 MR. IACOPI NO: Is that 41?

3 MS. LINOWES: Yes, it is.

4 MR. IACOPI NO: If you have extra copies,
5 that would be great.

6 MS. LINOWES: I do.

7 (Ms. Linowes distributing documents.)

8 MR. IACOPI NO: This document has been
9 marked as "IWA-X-41".

10 MS. LINOWES: Thank you.

11 BY MS. LINOWES:

12 Q. Mr. Lowe, I will explain what that document is when I
13 get to it, I'm not ready to reference it yet. Is it
14 your representation that, with the exception of SPE
15 Utility Contractors, Stuart Irby Company, and Aristeo
16 Contractors -- Construction Company, all other liens

17 that were filed are due to or were in regard to KR
18 Electric?

19 A. No.

20 Q. Okay. Can you elaborate then?

21 A. Okay. But I am going to refer to your exhibit. I
22 mentioned earlier a lien by an engineering company
23 called "DimJim", well, it's "DMJM", they're referred to
24 "DimJim". They're now known as "AECOM USA". I see on
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[WITNESS: LOWE]

1 your exhibit you've got the name as "AECOM USA". So,
2 the AECOM USA liens, which I actually disagree on the
3 amounts, --

4 Q. Excuse me, Mr. --

5 A. -- the AECOM USA liens, or the DMJM liens were nothing
6 to do with -- were nothing to do with KR.

7 Q. Okay. And, then, there -- other than that, that will
8 be all of the others are related to KR?

9 A. Yes, I believe that's correct.

10 Q. Including the Robert -- the Maxwell Robert?

11 A. No, except Robert Maxwell, sorry. Except Robert
12 Maxwell.

13 Q. Okay. Then, it's your contention that \$2.2 million
14 owed was, or somewhere thereabouts, was owed to KR, the
15 rest were liens filed directly against Noble or other
16 related entities of Noble?

17 A. Well, I think, as I testified earlier, I understand the
18 total lien amount resulting from the KR situation was
19 approximately 2 million.

20 Q. Two million? And, when did you hire KR for these
21 projects?

22 A. KR were on the New York '07 Portfolio. I do not know
23 when the contract was entered into. But I would guess
24 it was sometime in the middle of 2007, but possibly
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[WITNESS: LOWE]

1 earlier.

2 Q. And, you're saying that -- I believe you testified that
3 you thought they closed their doors in December 2007?

4 A. Well, I'm going to confirm or update my earlier
5 testimony. I understand they actually just went out of
6 business. I'm not sure, though, if they filed
7 bankruptcy. My recollection is that it all happened
8 around the end of 2007, beginning of 2008.

9 Q. Okay. So, it's possibly January 2008?

10 A. Possibly.

11 Q. And, you had a contract with KR?

12 A. Yes, we did.

13 Q. And, did you pay KR a lump-sum in the beginning of the
14 contract? Did you pay them regularly? Did they bill
15 you on a monthly basis? How did that work?

16 A. I have not reviewed that contract. I suspect that we
17 paid the money over time, based on work performed,
18 but I have not looked at that contract.

19 Q. Would that have been typical of contractors then, that
20 you would have paid over time, as work was performed,
21 you were billed?

22 A. Generally, that's how most -- most contracts work.

23 Q. Okay. So, do you have proof that Noble made regular
24 payments to KR?

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[WITNESS: LOWE]

- 1 A. I --
- 2 Q. With a payment history?
- 3 A. I don't know. I mean, in our record of accounts, I
- 4 would assume we have exactly what we paid to KR. I
- 5 don't know exactly what we paid for a fact.
- 6 Q. So, you were making regular payments, and then all of a
- 7 sudden KR just disappeared?
- 8 A. As I said, KR went out of business.
- 9 Q. Were you notified that they were going out of business?
- 10 A. I can't recall. I think we were -- I don't think they
- 11 notified us. But, as I recall, as I mentioned, I think
- 12 we had some liens show up, and then the kind of, you
- 13 know, rumor mill in the site, within the construction
- 14 community, was that they were having construction
- 15 difficulties -- I'm sorry, financial difficulties. So,
- 16 I think we had the view that they may be going out of
- 17 business.
- 18 Q. So, you're saying you had a contractor, you had an
- 19 agreement with them, you were making regular payments
- 20 based on invoices received from KR. There was an
- 21 expectation that KR was paying subcontractors. Is that
- 22 correct?
- 23 A. That's a good summary. That's a summary of the
- 24 situation, yes.

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[WITNESS: LOWE]

- 1 Q. And, then, all of a sudden liens started appearing
- 2 against Noble?
- 3 A. Uh-huh.
- 4 Q. And, that was the first indication that perhaps
- 5 subcontractors were not being paid?

6 A. That's the first I was aware of it.

7 Q. You were aware of it. What about Noble Environmental?

8 A. And, that's the first I think the Company was aware of
9 it.

10 Q. And, then -- well, if I can reference now the document,
11 that IWA-X-41, and explain briefly what this is. I
12 took the lien documents or the documentation that was
13 copied from the courthouses in the counties of Clinton,
14 Ellen -- I mean, Clinton, Franklin, and Wyoming County.
15 And, simply reproduced the information so it's easier
16 to follow. If you were to look at the document,
17 Appendix A, which would be "IWA-X-42", that will be a
18 duplicate of the information there? I want to make
19 sure your comfortable with what you're looking at.

20 MR. PATCH: I thought it was, just to be
21 clear on the record, 41 or is it 42?

22 MS. LINOWES: This document that is a
23 summation of the liens is "41", based on information in
24 "42".

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[WITNESS: LOWE]

1 MR. PATCH: I see. Okay.

2 BY MS. LINOWES:

3 Q. And, Mr. Lowe, you have copies of both documents, at
4 least the Clinton --

5 A. Yes.

6 Q. Okay. The first lien that was filed against Noble
7 Environmental was dated December 19, 2007?

8 A. Yes.

9 Q. Is that -- okay. And, that you stated, I believe
10 earlier, that that was a KR subcontractor?

- 11 A. Yes.
- 12 Q. Okay. And, then, going down the list, these -- I'm
13 sorry, there's a typographical -- typo on the next one,
14 that should be "December 28, 2007", which would have
15 been the second one, the second lien filed. You see
16 that?
- 17 A. Uh-huh.
- 18 Q. Okay. Now, you stated under questioning with Mr. Patch
19 that you are aware of lien law in the State of New
20 York, is that correct?
- 21 A. I've become familiar with lien law in the State of New
22 York.
- 23 Q. You've become familiar with it recently?
- 24 A. Yes.
- {SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

- 1 Q. Because of these liens?
- 2 A. Yes.
- 3 Q. Okay. Now, you're aware that, in the State of New
4 York, there's a limitation of eight months that a lien
5 has to be filed?
- 6 A. As I said earlier, I think there was a limitation.
7 Eight months sounds to be the right time.
- 8 Q. Okay. So, if the KR went out of business in December
9 2007, then the last liens would be filed by
10 August 2008?
- 11 A. I didn't say "KR went out of business in December
12 2007."
- 13 Q. I believe initially you did, and now you said "early --
14 A. I said "end of 2007, beginning of 2008".
- 15 Q. Okay. If they went out of business, were you still

16 paying them in January 2008?

17 A. I would to have go and check my accounting records.

18 Q. And, as someone who is an entity that was in business
19 building a fairly expensive wind project, when you
20 first received a lien on December 19, 2007, would that
21 make you a little concerned about the contractor that
22 you're working with?

23 A. Yes, it did.

24 Q. Did you do anything about it?

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[WITNESS: LOWE]

1 A. Yes. As I mentioned, we discussed with our banks,
2 because we knew we were going to have a lien problem
3 under our agreement. And, as I recall, my --

4 Q. Excuse me. You discussed with your banks in December
5 2007?

6 A. I would have to go back and look at my notes. But
7 either December 2007 or early 2008, we discussed with
8 our banks, because we realized that there's potential
9 for more liens and requirement to get a waiver under
10 our bank agreement, as I walked through with Mr. Roth.
11 With respect to the engineering side, it's a long time
12 since I discussed with my engineering people, but I
13 believe we, you know, became concerned about the
14 financial performance of KR and began to make sure we
15 were fully familiar with what they were doing at the
16 substation, and whatever additional work we would need
17 to do, to make sure that we completed the substation in
18 line with the specs of the project.

19 Q. So, I guess I'm confused, and maybe you did go through
20 this with Mr. Roth, but I'm still not certain what

21 you're saying. KR was showing that it had indications
22 of financial difficulties, and you were still working
23 with them or did you let them go before they went out
24 of business?

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[WITNESS: LOWE]

1 A. I can't recall. And, I don't know if we ever actually
2 "let them go".

3 Q. So, despite liens being filed, despite Noble
4 Environmental -- I believe your assertion is that you
5 made regular payments or at least there is no proof
6 that you're bringing today that shows you did not. You
7 made -- it's your assertion that you made regular
8 payments to KR on a regular basis, and so -- and that
9 you were fully paid up with KR?

10 A. Yes.

11 Q. As of December 2007?

12 A. I believe so.

13 Q. And, then -- So, then, you received a lien, a
14 notification of a lien against Noble Environmental or
15 an entity of Noble Environmental in December 2007?

16 A. Yes, I haven't confirmed your list against mine. But,
17 as I said, it was in that time period. So, I'll be
18 okay to say that's December.

19 Q. But you continue to work with KR, is that what you're
20 saying?

21 A. Yes, I think so. I mean, you know, as I recall, it was
22 the middle of winter. We were trying to get the work
23 completed on this substation. And, you know, we wanted
24 KR -- we wanted KR to do the work it contracted to do.

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[WITNESS: LOWE]

1 We realized most of it was actually being done by their
2 subcontractors. We made payments to KR. We made some
3 direct payments to subcontractors, who basically, I
4 think, came to us and said "we don't want to work with
5 KR, but we'll do this work directly with you." We took
6 contingency plans as to what additional engineering
7 work and other firms were needed to get the substation
8 finished to comply with our specs. And, within the
9 financing agreement, we took steps to make sure we were
10 in compliance with the agreements by bonding off the
11 liens.

12 Q. Mr. Lowe, I'm really confused about the timing, though.
13 I believe that this work that you're talking about,
14 under cross-examination with Mr. Roth, you were talking
15 about various, I want to be careful here, because it
16 was under a -- when we were in confidential session,
17 but I think that this was fairly open information.
18 That there was changing of schedules, because of
19 concerns about various subsidies that were available.
20 What was the timing of that then? If you're saying
21 that -- because it was also discussed about the work
22 that had to be done on the substation?

23 A. KR was a subcontractor with respect to the New York '07
24 Portfolio. My discussion with Mr. Roth was in New York
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

[WITNESS: LOWE]

1 '08, when we we're talking about the expiring of the
2 Production Tax Credit.
3 Q. Okay. So, the substation that you're talking about has

4 to do with Ellenburg and Clinton?
5 A. That's right.
6 Q. Okay. And, so, what was the timing of that work?
7 A. The New York '07 Project -- The New York '07 Project,
8 the construction finance closed in June of 2007. It
9 term converted in May 2008. The construction work took
10 place, for the most part, between June of 2007 and May
11 of 2008.
12 Q. I understand. I'm trying to get my arms around the
13 substation work that you're saying -- that apparently
14 that that was the KR Electric was hired to work on the
15 substation?
16 A. The substation work was generally towards the end of a
17 project construction period. So, I would have to look
18 back and say exactly when we started working on it.
19 There were doubtless other people, other than KR,
20 worked on it. And, it was completed in the -- I
21 believe it was kind of completed in the -- probably in
22 the March time frame, because there's a commissioning
23 period after that. And, so, I'm working backwards to
24 when we term converted.
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[WITNESS: LOWE]

1 Q. I believe that the FERC data for those projects show
2 that, at least the Clinton Project, did that project
3 not come online in March?
4 A. Yes, that's what I said. You complete the substation,
5 so you can actually bring the project online, but you
6 can't bring on every turbine online at the same time.
7 You go through a commissioning process, which
8 effectively goes sequentially through the turbines. As

- 9 I recall, that took, in our New York '07 Portfolio,
10 that took about -- I think that took in some 50 to 60
11 days.
- 12 Q. So, you're saying that the information that will be in
13 the FERC data would be sometime after March?
- 14 A. I'm not quite sure what FERC data you're referring to.
15 But, one piece of data you might be referring to is
16 when -- when we first export power to the grid.
- 17 Q. That's correct.
- 18 A. Okay.
- 19 Q. And, when would that have been?
- 20 A. I think that was probably in March.
- 21 Q. In March?
- 22 A. Uh-huh.
- 23 Q. So, the substation was being built in January and
24 February?
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[WITNESS: LOWE]

- 1 A. Yes.
- 2 Q. And, KR was still working with you?
- 3 A. I would have to go confirm exactly who was working in
4 which week or which month.
- 5 Q. Okay. But you had reason to believe that there was
6 going to be a lien problem?
- 7 A. Yes.
- 8 Q. Now, the other companies -- so, well, let me ask you
9 this. Commonwealth Associates, that has a lien filed
10 on October 10, 2008, do you see that?
- 11 A. I did see that.
- 12 Q. And, is that a KR company?
- 13 A. That's -- We believe that's a KR situation, yes.

14 Q. So, they were then still -- then, working back eight
15 months, the expectation on the lien is that the last
16 item of work performed or the last items of materials
17 furnished, occurred eight months prior to or at least
18 within eight months of October 10, 2008?

19 A. Provided that lien was filed validly, yes.

20 Q. I'm sorry, provided what?

21 A. Provided that lien was filed validly, that's my
22 understanding.

23 Q. So, then, if you believe that's KR, then that would
24 have been sometime in March?

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[WITNESS: LOWE]

1 A. Well, October is the tenth month, and February is the
2 second month, so I guess it would be February, if it's
3 eight months.

4 Q. Okay. Well, so that then KR may have been around even
5 in February?

6 A. Yes. Or, a subcontractor was doing work under its
7 subcontract with KR in February.

8 Q. Working for you directly?

9 A. No. A subcontractor was doing -- If they're working
10 for us directly, they would have been paid.

11 Q. So, now, you had mentioned that you were surprised that
12 Aristeo had not -- had filed a lien against Noble, I
13 believe you said that earlier today, is that correct?

14 A. I don't recall my saying I was "surprised", any more
15 than the whole concept of people filing liens, people
16 don't necessarily give you forewarning.

17 Q. How much time would you expect a contractor to wait
18 before he files a lien?

- 19 A. I don't have an expectation of that.
20 Q. Well, at least eight months, would you say, within the
21 State of New York?
22 A. No, because I think the "eight-month period" you
23 referred to is the limit as to when you can no longer
24 file liens.
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[WITNESS: LOWE]

- 1 Q. Correct.
2 A. So, if you were doing work in the first month, you have
3 until the ninth month of the year to file a lien.
4 Q. Uh-huh. If you finish the work within the first month,
5 correct?
6 A. Well, I think the time period -- I think the time
7 period extends from the date on which you last
8 completed work on the project.
9 Q. Now, Aristeo, according to the lien that they filed in
10 Franklin County, New York, states that "The first time
11 when the first items of work were performed was on or
12 about May 21st, 2008." Does that sound about right?
13 A. I don't know.
14 Q. It says "The time when the last items of work were
15 performed and materials were furnished was on or about
16 September 10, 2008."
17 A. Okay.
18 Q. Does that sound about right?
19 A. No, I mean, I think that's what it says in the lien,
20 yes.
21 Q. So, you are disputing that or you just don't know?
22 A. I'm just -- if you're asking me what it says in the
23 lien, I think that's what it says in the lien.

24 Q. Do you know when you hired Aristeo?
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[WITNESS: LOWE]

1 A. Aristeo were a major contractor on our projects. I
2 think the total amount we have contracted with Aristeo
3 with, between New York '07 and New York '08, is
4 probably in excess of \$100 million. They were hired on
5 this project right at the beginning of this project.
6 They had a very significant contract with us.

7 Q. The lien that they filed had a specific job that was
8 listed. "The labor performed included excavation and
9 backfill of soil, installation of steel and concrete
10 foundation systems for placement of turbines, and
11 erection and installation of turbine components".

12 A. Yes. That's right.

13 Q. Is that right?

14 A. That's what Aristeo did.

15 Q. It says "The agreed contract price and value of labor
16 and materials performed is 26,628 -- excuse me --
17 \$26,628,965?"

18 A. Okay. I mean, if that's what it says in the lien.

19 Q. For the Town of Chateaugay?

20 A. Correct. Yes. Aristeo had done work for us in the
21 Town of Altona, in the Town of Chateaugay, and in the
22 Town of -- and the project of Clinton and Ellenburg.

23 Q. Mr. Lowe, only one lien has been filed in Franklin
24 County, and then others in Wyoming County from this --
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[WITNESS: LOWE]

1 I'm sorry, just, with Aristeo, just this one has been
2 filed. Is that -- Are you telling me that perhaps we

- 3 could expect other liens to be filed from Aristeo?
- 4 A. I don't know whether we can expect other liens to be
5 filed from Aristeo.
- 6 Q. Do you know if you owe money above and beyond what this
7 -- this 2.9 million?
- 8 A. I know I have an amount in dispute with Aristeo, which
9 is slightly in excess of 2.9 million. And, I know I'm
10 going to take action to pursue that dispute with him.
- 11 Q. So, you had stated earlier today, and correct me if
12 I've misunderstood you. But I believe you said,
13 specific to KR, that you were "not going to bond off"
14 -- that you were "holding off bonding off the liens
15 until you were certain all of the liens had been
16 filed." Is that about what you said?
- 17 A. No. We have bonded all the liens on KR. What we said
18 was, and I believe we started this process, but, when
19 you know you have all the liens in, you, obviously,
20 want to bring to a head the court proceeding, which is
21 all going to relate to, you know, the obligations that
22 KR had to their subcontracts. You know, at the end of
23 the day, I'm sure these subcontracts, you know, are
24 going to want to ultimately look through KR to us, and
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[WITNESS: LOWE]

- 1 that's why we have posted these liens. But we posted
2 all those liens when they -- we bonded all the liens
3 when they came in.
- 4 Q. And, when was that?
- 5 A. Well, the dates the liens came in are the dates which
6 you've got on your form here.
- 7 Q. So, all of these liens that are in Clinton County,

8 beginning with Zielinski Asphalt, going down to what
9 you believe to be Commonwealth Associates?
10 A. Uh-huh.
11 Q. All of the KR?
12 A. Uh-huh.
13 Q. Those have all been bonded off?
14 A. Yes. As I said in my direct testimony, yes.
15 Q. And, have these companies been paid?
16 A. I don't know what KR has done with these companies.
17 Q. No, with -- Maybe I'm misunderstanding what "bonding
18 off" means. Has payment been made and the liens
19 eliminated for these?
20 A. What "bonding off" means is that we have posted a bond
21 to the court, you know, equal to an amount, in fact,
22 slightly greater than the amount of the lien, to negate
23 any impact the lien has. So, it doesn't have an impact
24 to us under our financing agreement, as it's bonded.
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[WITNESS: LOWE]

1 And, to the extent for any other party might have a
2 problem, because they had a lien on their property,
3 they don't, because the lien is effectively bonded and
4 taken care of. Now, what that means is, the ultimate
5 resolution of the dispute, as to who, you know, who
6 gets paid by KR, you know, is for a court still to
7 determine. But we have kind of bonded them so that,
8 you know, at the end of the day somebody can look and
9 say "there's monies there to pay all the -- you know,
10 to pay everything that people filed liens for", even if
11 it's not our responsibility.
12 Q. So, none of these entities have been paid?

13 A. As I said, to the extent any of these entities ever
14 contracted with us directly, they have been paid. To
15 the extent they contracted with KR, I don't know how
16 much KR has paid them, and how much KR hasn't paid
17 them. To the extent they filed a lien claiming
18 nonpayment from KR, we have put up a bond which covers
19 the amount of the lien.

20 Q. And, it's up to the courts to release that money and
21 distribute it?

22 A. I think it's up to the court to decide, you know, who
23 gets what from KR, to the extent there is any money and
24 any obligation we ultimately have.

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[WITNESS: LOWE]

1 Q. Okay. So, Item Number 20 --

2 A. We are taking -- Ultimately, we are taking all the
3 equity risk on this. We put the money up. We bonded
4 these liens. It will work itself out in court.

5 Q. So, Item Number 21, Adirondack Energy Products, it
6 would not surprise you that I spoke with the attorney
7 for this company?

8 A. Uh-huh.

9 Q. And, they are still owed the \$3,839.48 for fuel
10 deliveries?

11 A. That's right, because -- yes.

12 Q. Now, with regard to Stuart Irby, that company is
13 located in Mississippi, is that correct?

14 A. I can't recall exactly what state, but I think it's
15 somewhere in the south, yes.

16 Q. And, you said -- I believe you said earlier that you've
17 had verbal communications with Stuart Irby Company that

18 indicated that you were -- you had a dispute with their
19 services, products, in the amount --

20 A. Not me, but others of my team representing Noble have
21 had those discussions. Ultimately, we paid Stuart
22 Irby, we reached a settlement. The Stuart Irby liens
23 have been removed. You know, Irby have been paid.

24 Q. But all those communications again were verbal. There
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[WITNESS: LOWE]

1 is no written documentation from Noble to Stuart Irby
2 stating that you had had a dispute with their services?
3 I mean, --

4 A. As I said, the bulk -- I'm sure the bulk of the
5 communications all, there may have been some bits of --
6 but we never did any lawyers' letters or anything like
7 that.

8 Q. You never did?

9 A. No.

10 Q. And, those Stewart Irby -- those liens have been filed
11 in all three counties. Are you aware of that?

12 A. Yes. I'm also aware that they have also removed them,
13 presumably, in all three counties. Or, if not, they're
14 in the process of removing them in all three counties.

15 Q. Okay. Now, would it surprise you -- well, let me ask
16 you this question. Did representatives of Stuart Irby
17 contact Noble Environmental in December 2008 seeking
18 payment?

19 A. I'm not sure. Maybe they -- it wouldn't surprise me,
20 though.

21 Q. That that would have happened?

22 A. Uh-huh.

23 Q. Would it surprise you that representatives from Stuart
24 Irby told me that on the phone?

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[WITNESS: LOWE]

1 A. I don't know what they would tell you on the phone.

2 Q. Did they -- Did Stuart Irby attempt to come to an
3 agreement so they would get payment from you, in
4 December?

5 MR. PATCH: Mr. Chairman, I think he's
6 already answered that they have reached agreement. So, I
7 don't know what this line of questioning --

8 MS. LINOWES: What I'm trying to show --

9 MR. PATCH: -- what the purpose is of
10 this. He said it a number of times, I think, so --

11 MS. LINOWES: Because the agreement
12 that's been recently achieved is independent of Stuart
13 Irby's efforts to come to some kind of agreement in
14 December. And, that's why I wanted to show the timeline
15 of it.

16 WITNESS LOWE: What do you mean it's
17 "independent of Stuart Irby's efforts"?

18 BY MS. LINOWES:

19 Q. When Stuart Irby contacted you in December, what was
20 your response to them?

21 A. You know, I'm not exactly sure what our company's
22 response was to them in December. I suspect they might
23 have said something along the lines of "we believe we
24 should be fully compensated", and we may have responded
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

- 1 that "we didn't agree with that".
- 2 Q. I'm sorry, you may?
- 3 A. And, we may have responded that "we didn't agree with
4 that." But I did not have those conversations with
5 Stuart Irby.
- 6 Q. You have made a fairly sizeable payment to Stuart Irby
7 within the last couple of days?
- 8 A. Uh-huh. Yes.
- 9 Q. In excess of a million dollars?
- 10 A. Yes.
- 11 Q. You indicated earlier today that you had been in
12 negotiations with Stuart Irby prior to any press
13 proceedings?
- 14 A. Yes.
- 15 Q. Or, press information?
- 16 A. Yes.
- 17 Q. Would Stuart Irby agree that they have heard from Noble
18 prior to March 19th?
- 19 A. I certainly hope they would. But I don't know what
20 they would say to you.
- 21 Q. So, you're stating that the lien has been discharged
22 then?
- 23 A. We have made a payment. I believe, you know, part of
24 our agreement was that the lien would be discharged.
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[WITNESS: LOWE]

- 1 You know, I know there is a process to remove liens.
2 So, you know, I'm pretty comfortable that certainly, by
3 the end of this week or maybe beginning of next, it
4 will be discharged. I think it's probably discharged
5 today.

- 6 Q. Was the amount that you paid -- the amount of liens
7 that were filed was for \$1.72 million, if my arithmetic
8 is correct. Does that sound right to you?
- 9 A. Sorry. Say that number again please.
- 10 Q. \$1.72 million.
- 11 A. I mean, I think that's consistent with the sum of the
12 three liens on this sheet, yes.
- 13 Q. Uh-huh. And, you paid all of that?
- 14 A. I don't think it's appropriate to discuss what our
15 final resolution to Irby was.
- 16 Q. I believe you had stated that you paid a "discounted
17 amount" today?
- 18 A. I said we paid a "discounted amount under their
19 contract."
- 20 Q. So, a discounted amount from what is here in the liens
21 or discounted amount --
- 22 A. I'm not saying that the lien amount represented the
23 total amount due under their contract.
- 24 Q. Okay. And, then, is there an agreement to pay
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[WITNESS: LOWE]

- 1 additional money over time?
- 2 A. No. Oh, actually, sorry. I think we pay in two, in
3 two segments. You know, one has been paid, and I think
4 the rest is, you know, within a month or some time
5 frame like that.
- 6 Q. And, I'm sorry, I don't know what you just said. Can
7 you repeat that?
- 8 CHAIRMAN GETZ: Well, actually, let me
9 interrupt for a second. Because I think the question said
10 "do you pay an additional amount over time?" I think, is

11 the question basically, "was the, whatever the resolved
12 amount of the dispute, was paid in installments?"

13 MS. LINOWES: Yes. Is there --

14 BY THE WITNESS:

15 A. There's still an amount to be -- There's still an
16 amount to be paid, which we have funds set aside for.

17 BY MS. LINOWES:

18 Q. And, can you say when that will -- I'm sorry, --

19 A. As I -- I would have to look back, but I think it's
20 either April or May. I mean, quite frankly, it's a
21 relatively short period of time.

22 Q. And, then, one last question. With regard to the
23 Stuart Irby lien, they state that the last date of work
24 was on "December 2nd, 2008" for Clinton County. And,
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[WITNESS: LOWE]

1 the Aristeo, I mentioned their date of last work
2 completed or materials furnished was "September 10th,
3 2008".

4 A. Uh-huh.

5 Q. So, Aristeo filed their liens six months later from the
6 last date of work completed. Stuart Irby filed just
7 two, almost three months later, or at three months
8 later. Does that surprise you?

9 A. I mean, as I kind of discussed at the beginning, you
10 know, New York Lien Law gives contractors a right to
11 file liens. And, I explained how they do that. How a
12 contractor decides to file a lien, the time periods
13 they use, the decisions they make, I don't know whether
14 it surprises me or not. I mean, it's just that's their
15 actions. And, you know, as I said, you know, in the

16 direct testimony, you generally find liens showing up
17 at the end of a project, because people, obviously,
18 want to make sure they get paid, and sometimes they do
19 it as a tool to preserve their rights or as a
20 negotiating tool.

21 Q. Mr. Lowe, on Aristeo, when was -- when was the last
22 time you worked with Aristeo? They said they
23 delivered, for this particular project, which they said
24 was \$26 million, in September of 2008, were you done
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

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[WITNESS: LOWE]

1 working with Aristeo at that point?

2 A. I would have to go back and look and say when the last
3 time we worked with Aristeo was. I'm not sure.

4 Q. So, they were owed at that time, according to their
5 lien, 10 percent, 2. -- more than 10 percent?

6 A. Which actually sounds generally like the retainage you
7 take under a contract, yes.

8 Q. And, what does that mean?

9 A. It means, generally, there's a hold back under the
10 contract, until people are satisfied that the work is
11 all complete and finished.

12 Q. And, so, you were holding back, and you have not made
13 any payments on this, this lien is still outstanding,
14 correct?

15 A. As I said at the beginning, this lien is still
16 outstanding. We have funds available to pay it.

17 Q. So, Aristeo has been in contact with you on a regular
18 basis since September trying to get these funds?

19 A. I don't know if Aristeo have been in contact with us on
20 a regular basis, but they certainly have been in

21 contact with us.

22 Q. So, this lien -- this lien, did you know it was coming?

23 A. I believe, in a communication, Aristeo said that they
24 were threatening to lien the project, yes.

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[WITNESS: LOWE]

1 Q. Seeking their -- And that, from September through till
2 March, or at least to that point where they made that
3 communication, had you communicated to them or given
4 them any opportunity to correct whatever you considered
5 to be the dispute?

6 A. Yes, I believe -- I believe we had.

7 Q. You don't know?

8 A. I believe with had.

9 Q. And, do you have any documentation of that?

10 A. I think we had outlined to them, and I can't remember
11 if this -- I think we had outlined to them the work
12 which we felt was -- which we wanted to -- that we were
13 in dispute with them. And, as I say, you know, we paid
14 a substantial amount of money to Aristeo.

15 Q. I'm not talking about that, though. I'm talking about
16 the 10 percent or better that you owed them.

17 A. Uh-huh.

18 Q. For work involving "excavation, backfill of soil,
19 installation of steel and concrete foundations for
20 placement of turbines". So, you gave them -- did you
21 give them an opportunity to correct the problems?

22 A. What problems do you think they necessarily are?

23 Q. Well, you're telling me there was a dispute.

24 A. Right. And, the dispute might not necessarily relate
{SEC 2008-04} [DAY 8 - redacted] {04-02-09}

[WITNESS: LOWE]

1 to workmanship. It might relate to how you've been
2 charged for workmanship, how they priced it,
3 relationships to other employers, a whole range of
4 things.

5 Q. So, you had a contract with them, correct?

6 A. Yes, we did.

7 Q. And, did you not negotiate all of that in advance?

8 A. Yes, we did.

9 Q. But you're saying that they reneged on that contract?

10 A. I'm trying to make sure I can answer this in open
11 session. You know, obviously, we are developing a
12 litigation strategy here. And, I'm not 100 percent
13 sure I want to, you know, publicize it completely.

14 Q. I guess I --

15 CHAIRMAN GETZ: Well, is it fair to say
16 that you had a dispute about performance --

17 WITNESS LOWE: Yes, we had --

18 (Multiple parties talking at the same
19 time.)

20 CHAIRMAN GETZ: Well, let's -- We've had
21 several problems with this all day long. I'm not sure how
22 Mr. Patnaude is getting all this on the transcript.

23 WITNESS LOWE: Sorry.

24 CHAIRMAN GETZ: But is it fair to say
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[WITNESS: LOWE]

1 that you had a dispute about performance under the
2 contract with Aristeo?

3 WITNESS LOWE: Yes. Yes. That's true.

4 BY MS. LINOWES:

5 Q. So, you're planning on filing a suit?

6 MR. PATCH: Mr. Chairman, there is
7 attorney/client privilege issues here, I think. And, I
8 don't think the witness really has to answer to the extent
9 that it involves litigation strategy, you know, for a
10 dispute in New York. So, I don't know how many more
11 questions Ms. Linowes has on this, but I think he's made a
12 good faith attempt to try to answer the questions about
13 it. But, the more detail we get, the more risk there is
14 that you run afoul of attorney/client privilege issues.
15 And, the Administrative Procedures Act specifically
16 recognizes that that's one of the areas that I think is
17 protected.

18 MS. LINOWES: Okay.

19 BY MS. LINOWES:

20 Q. Then, allow me to ask this then. What is the nature of
21 the dispute? What is it that you're withholding? Why
22 are you withholding that money?

23 MR. PATCH: Mr. Chairman, I think that's
24 asking the same question over, just different words. And,
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[WITNESS: LOWE]

1 I think she --

2 MS. LINOWES: I don't think we got an
3 answer to it, Mr. Chairman.

4 CHAIRMAN GETZ: Well, it seems to me
5 we're kind of reploting the same ground over and over.
6 He's indicated there is a dispute. I'm not sure how the
7 ball is being moved forward, in terms of asking the
8 witness or inquiring about litigation strategy, what the
9 subsets of the argument are. We know that there is a

10 dispute, and there's some attempts to resolve the dispute
11 going on.

12 MS. LINOWES: Well, Mr. Chairman, --

13 CHAIRMAN GETZ: How does the details
14 help us decide what we need to decide relevant to this
15 issue?

16 MS. LINOWES: Well, where I'm going with
17 this, Mr. Chairman, is that the fact is liens have been
18 filed, a substantial amount of money in the form of liens
19 have been filed. The Applicant has stated today that all
20 of the -- that the communications with a number of these
21 outstanding liens or these companies have been verbally --
22 have been verbal, there's nothing documented. So, the --
23 just there is nothing backing up the statements that he's
24 making. So, in terms of what dispute, whether there

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[WITNESS: LOWE]

1 really is a dispute, and has anything been documented?
2 So, I'm merely asking if he could identify at least the
3 nature of the dispute, so that perhaps it can be verified.

4 MR. ROTH: If I can stick my neck into
5 this a little bit. I think it's a legitimate inquiry to
6 determine whether there is, in fact, a legitimate good
7 faith dispute with Stuart C. Irby, especially in light of
8 a lengthy relationship that they have with them and the
9 size of the previous contracts, if, for no other reason,
10 to determine whether the dispute is essentially what's
11 driving the nonpayment. I think, in light of the mention
12 of an installment agreement on Aristeo, to pay them,
13 that's a legitimate inquiry.

14 CHAIRMAN GETZ: You had me up until the
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15 last connection, I don't really follow that.

16 MR. ROTH: Then, skip that part.

17 CHAIRMAN GETZ: But what I wanted to get
18 back to, though, is I think he's answered these questions
19 already, in the types of issues that may be in dispute.
20 But can you try and rephrase your question.

21 WITNESS LOWE: Or would you like me just
22 to try and answer that?

23 MR. PATCH: No.

24 CHAIRMAN GETZ: Well, if you think you
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1 can.

2 WITNESS LOWE: Again. Maybe Doug would
3 kick me, but --

4 MR. PATCH: You're too far away.

5 WITNESS LOWE: I know.

6 MR. ROTH: You can get up.

7 WITNESS LOWE: Aristeo -- Aristeo, as we
8 said, you know, you outlined the work that Aristeo did. I
9 think, when you look at that work, it involves a number of
10 things. It involves bringing in fill to put around the
11 turbine after you've dug the hole to put it in. And, it
12 also involves disposing of soil that you've dug out of the
13 ground before you place the turbine in. And, both of
14 those activities end up being charged for. And, there is
15 some, you know, and the nature of dispute really relates
16 to "were we charged the appropriate amount for those
17 activities?" There are some subsidiary issues which I
18 prefer not to go into. But, basically, that's what it
19 gets down to. And, those are the kinds of areas that we

20 are in discussion with them on.

21 BY MS. LINOWES:

22 Q. So, you had a contract in place, it had some amount of
23 detail in terms of costs, a breakout of costs for work
24 to be done, is that correct?

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[WITNESS: LOWE]

1 A. Yes.

2 Q. And, so, when you looked down that contract that you
3 had signed with Aristeo, are you saying that the actual
4 invoices that came forth against that contract were
5 overcharging for work?

6 A. It's, unfortunately, a construction contract is not as
7 simple as you make it describe -- as you describe it.
8 There are issues when people submit change orders under
9 contracts. There are issues as to exactly how that
10 change order is billed under the contract. And, it is
11 those type of issues. This is not a matter of Company
12 A said it would deliver X for ten dollars, X was
13 delivered, and you get paid ten dollars. It's a
14 somewhat more complicated issue, to do with how you
15 calculate the amount of fill you have? What's the
16 definition of a "suitable soil"? Where you put the
17 soil afterwards? How much people are charged for those
18 activities? And, how does that all relate together?

19 Q. And, are you saying that, given the size of the
20 contracts that you've had with this company in the
21 past, you've never had an issue with them overcharging
22 in the past? Is that what you're saying?

23 A. I'm not making a comment on that.

24 Q. Okay. Is it typical for engineering change orders or

[WITNESS: LOWE]

1 contractual change orders to be signed off on by Noble
2 Environmental, as well as its contractors?

3 A. Generally, that's how a change order works. It
4 wouldn't be signed off by NEP, it would be signed off
5 on by the project company or Noble Constructors.

6 Q. And, so, then you were comfortable with those change
7 orders or you were not?

8 A. Yes. This is getting into a lot of detail, which may
9 not be appropriate. You have change orders. You also
10 have some other duties, with respect to the estimation
11 of costs, which is put on the contractor, pursuant to
12 the terms of a contract. We also have the right, as I
13 mentioned earlier, to audit some of those costs and
14 review. And, we've been through -- we've either been
15 through or are going through the process around that.

16 Q. Right now?

17 A. As I said, we've either been through or are going to.

18 Q. On these? On this particular contract?

19 A. Yes.

20 Q. Okay. So, basically, stuff happens with the contracts,
21 things happen, where you get cost overruns, there's
22 disputes that are happening. And, here you are -- you
23 have quite a list of non-KR contractors, SPE Utility,
24 AECOM, Stuart C. Irby, Aristeo, and then Robert

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1 Maxwell, all having disputes with you?

2 A. As we say, I've settled -- we've settled with DMJM,

3 Irby. SPE had never indicated any dispute. To be
4 honest, I'm not 100 percent sure why they filed their
5 lien at the time they did. We have a settlement
6 agreement with SPE, and we paid SPE. Robert Maxwell
7 was a former consultant, a full-time employee -- and
8 basically acted as a full-time employee. And, I
9 suspect he disputes the manner in which he left the
10 Company.

11 Q. So, I'm sorry, SPE, you said settled? When did that
12 happen?

13 A. Last week or the week before.

14 Q. I spoke with them a couple weeks ago and they had not
15 been settled.

16 A. Okay. Well, it's been settled now.

17 Q. Okay. So, you've obviously taken action since this
18 whole thing came up?

19 A. Well, SPE filed their lien, as you say, on -- it would
20 appear in January. You know, we paid SPE.

21 Q. But this week? Last week?

22 A. Last week, I think.

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

24 I don't have any more questions.

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1 CHAIRMAN GETZ: Anything from the
2 Committee? Mr. Normandeau.

3 BY DIR. NORMANDEAU:

4 Q. Going back to the Aristeo, I take it that part of the
5 contracts with the removal and bringing in the fill
6 were on a volume basis, is that correct?

7 A. Yes.

8 Q. So, it relates to -- these issues relate to "were those
9 volumes correct measurement and such?", I would take
10 it?

11 A. Yes.

12 DIR. NORMANDEAU: Okay. Thank you.

13 WITNESS LOWE: You got it.

14 CHAIRMAN GETZ: Any other questions?

15 Okay. Redirect or --

16 MR. IACOPI NO: I have one.

17 CHAIRMAN GETZ: Mr. Iacopi no.

18 BY MR. IACOPI NO:

19 Q. Mr. Lowe, could you just give the Committee please a --
20 sort of a general overview of the requisition process
21 for payment under your contracts?

22 A. Okay. I'm trying to work out how to do that in a
23 general way. Do you mean internal or vis-a-vis the
24 subcontractor?

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1 Q. With your subcontractors and contractors.

2 A. Okay. You know, in essence, you know, we have a
3 subcontract with a vendor or supplier of services.
4 And, for the most part, these are structured for
5 payment for work performed, and they will submit
6 invoices over time as work is performed. We, in the
7 past, you know, you try and kind of get that to work in
8 process, so that you're getting invoices submitted when
9 you make draws on your bank facility. There's a lot of
10 paperwork goes with it, because they need to submit
11 lien waivers to ensure they're not going to lien the
12 project in the future and acknowledgment of payment.

- 13 But that's kind of the general process.
- 14 Q. And, then, on the flip-side of that, with your
- 15 financing -- your lender, when the requisitions come
- 16 from your contractors and subcontractors is an
- 17 Application then made to the lender for payment of
- 18 those?
- 19 A. It's not as direct. It's not as --
- 20 Q. Just explain to the Committee --
- 21 A. Sorry.
- 22 Q. -- how direct or indirect that is?
- 23 A. You -- The project company is funded with equity, which
- 24 we've invested, and debt. We can sometimes pay
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- 1 invoices directly out of equity. You know, as we
- 2 decide, when we have a kind of, you know, portfolio of
- 3 invoices, we will make, you know, a draw under a bank
- 4 facility to fund that. And, in the process of doing
- 5 that, we also have to demonstrate the other amounts
- 6 we've paid up to that point out of equity.
- 7 Q. So, you have to satisfy the lender that you're
- 8 maintaining control over the project --
- 9 A. Yes.
- 10 Q. -- and that you are, I guess, maintaining control is
- 11 the basic --
- 12 A. Yes, it's fair to say that the lender's independent
- 13 engineer reviews every invoice which is submitted,
- 14 reviews it against the budget, confirms if we need to
- 15 put in more equity, we put in more equity. And,
- 16 ultimately, the lender's independent engineer will go
- 17 on the site and kind of confirm that the work has been

18 done as well.

19 CHAIRMAN GETZ: Mr. Normandeau.

20 DIR. NORMANDEAU: One other thing.

21 BY DIR. NORMANDEAU:

22 Q. The contractor that went out of business, --

23 A. Uh-huh.

24 Q. -- did you say that the folks responsible for --
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1 A. For the credit check.

2 Q. -- for putting them on a credit check and bonding are
3 no longer with you?

4 A. That's right.

5 Q. Would it be fair to say they paid the price for that
6 mistake?

7 A. My lawyers will tell me I'm not allowed to comment on
8 HR type matters.

9 Q. That's okay.

10 A. But it was certainly -- it was certainly a
11 consideration.

12 Q. It contributed to their review, is that what you're
13 telling me?

14 A. Yes. Yes. That's a better way of saying it.

15 CHAIRMAN GETZ: Any redirect, Mr. Patch?

16 MR. PATCH: Just a couple of things. I
17 have a news article I'd like to have marked as the next
18 exhibit. I think it would be "Petitioner's 51", if I have
19 that correct.

20 (The document, as described, was
21 herewith marked as Petitioner's Exhibit
22 51 for identification.)

23

24 BY MR. PATCH:

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1 Q. On cross-examination by Mr. Roth, you were asked a
2 question about the relations in New York. And, I guess
3 I'd want to point out to you, in this article, which is
4 -- has a headline of "wind-farm firm vows to clear
5 liens". It's the PressRepublican. It's dated "March
6 28, 2009". And, on the second page of this, it says
7 "Owners say they were reassured by the phone calls from
8 Noble and will wait to see what happens next." Am I
9 correct?

10 A. Yes.

11 Q. And, under that, it quotes from a couple of different
12 landowners. A Shari Spaulding, who says she was called
13 by Noble, she had not been concerned about the liens
14 "because Noble has been very good." And, then, another
15 landowner said "he wasn't worried", a William Jones.
16 And, do I understand correctly, I mean, you, in fact,
17 pointed this article out to me, did you not?

18 A. Yes, I did.

19 Q. So, you're familiar with this article?

20 A. Yes.

21 Q. Are you familiar with the efforts that Noble has made
22 to try to reassure?

23 A. Yes. And, one of the frustrating things about the
24 Aristeo liens is, and I'm not 100 percent sure how this
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1 works in lien law, but, at the end of the day, they put
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2 a lien on both stuff that they had done for us and,
3 because that stuff was on property where we leased that
4 property from landowners, it kind of has an impact on
5 those landowners, because, you know, they suddenly find
6 that they have a lien on the property. We, you know,
7 there's, you know, it doesn't actually result in a
8 default under any of our easement agreements. And,
9 technically, we don't have an obligation to do anything
10 about it, but it's something which concerned us about
11 our landowners. So, one, you know, we reached out to
12 all of them, in person, and kind of explained the
13 situation and told them our plan to resolve. And,
14 secondly, that's why, in the case of Aristeo, as I
15 mentioned earlier, we also plan to post a bond. And,
16 we're not -- we don't need to do that under the
17 financing agreement. We're doing it because we think
18 it's the right thing to do for our landowners while we
19 get through this dispute with Aristeo.

20 Q. In response to a question from Mr. Roth on
21 cross-examination, I heard you refer to "Project
22 Finance Awards". Could you tell us what Project
23 Finance Awards Noble has received or you have received?

24 MR. ROTH: I object to this, to this
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1 question. It was offered by him simply as a gratuitous
2 response, but it wasn't in any way part of the
3 cross-examination. He explained whatever it was at the
4 time, and I think that ought to be enough.

5 CHAIRMAN GETZ: I don't think it was a
6 gratuitous response, it was responsive to the question.

7 I'm going to permit him to respond.

8 BY THE WITNESS:

9 A. Both our New York '07 and New York '08 financings have
10 won either Renewables Deal of the Year or the
11 Environmental Deal of the Year Awards. The 2007 won
12 award -- won that award for project -- from the
13 Euromoney Project Finance magazine and from Project
14 Finance International. And, in fact, the 2008 Project
15 won the same awards from both Project Finance magazine
16 and Project Finance International. And, that basically
17 is an award amongst renewables deals either in the
18 Americas or in North America.

19 MR. PATCH: No further questions. Thank
20 you.

21 CHAIRMAN GETZ: Thank you.

22 MS. LINOWES: Mr. Chairman, I have a
23 follow-up question to something that Mr. Lowe just said.

24 CHAIRMAN GETZ: On which issue?

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1 MS. LINOWES: On having to do with the
2 obligation of Noble to address liens on leaseholders'
3 properties.

4 MR. ROTH: And, I have one with respect
5 to the article.

6 CHAIRMAN GETZ: Okay. Well, let's hear
7 this question.

8 MS. LINOWES: Okay.

9 RECROSS-EXAMINATION

10 BY MS. LINOWES:

11 Q. Mr. Lowe, I believe you just said that you had no

12 obligation to leaseholders to do anything about liens
13 that are filed against properties that your turbines
14 are sited on or other material?

15 A. That's right.

16 Q. So, your lease agreements with your landowners in no
17 way protects landowners from nonpayment on Noble's part
18 for contracts?

19 A. It protects landowners against nonpayment by us. As I
20 say, this lien issue was something that we were
21 surprised by the way it impacted the landowners. And,
22 when we realized it impacted the landowners, we kind of
23 have done something about it or were going to do
24 something about it. So, there was nothing deliberate
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1 in these easements to do this. And, it's kind of a
2 collateral side effect, which we discovered, and, you
3 know, we're going to do something about it and fix.

4 Q. And, just so I'm clear, you're saying that, in the
5 future, any leases that you sign with landowners, then
6 you will now -- you now learn something and you'll move
7 forward, so you're learning as you go?

8 A. I didn't say "we're learning as we go".

9 Q. Okay.

10 A. And, I'm not stipulating as to exactly what we'll do in
11 the future. I'm saying, when Aristeo filed these
12 liens, and they had the effect of lienning property of
13 the landowners, despite the fact that the way the lease
14 agreement was structured we didn't have an obligation
15 to do something, it is our intent to do something,
16 because we think it's the right thing to do for our

17 landowners. And, that's kind of the way this company
18 tries to work, when we're doing this, this business.

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

20 CHAIRMAN GETZ: Mr. Roth.

21 BY MR. ROTH:

22 Q. The article from the PressRepublican speaks about
23 landowners being satisfied and -- with Noble's response
24 to the liens on their property. But it doesn't say
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1 anything about the 20 some contractors who were left in
2 the lurch by KR, does it?

3 MR. PATCH: Mr. Chairman, that -- I
4 mean, I don't know how that's relevant to the article. I
5 mean, he's saying something that isn't in the article.
6 He's asking a question about what something isn't in the
7 article, not something that is in the article.

8 CHAIRMAN GETZ: Yes, we're really
9 getting into an argument about how this should be -- how
10 this should be viewed. It's obvious what the -- this
11 document speaks to what it speaks to. And, things that
12 aren't included in it aren't spoken to. If you want to
13 follow up with this in your brief that what should be made
14 out of it, then there will be plenty of opportunity to do
15 that.

16 MR. ROTH: Well, my point is simply
17 that, through their inattention to the bonding
18 requirement, 20 some contractors are left unpaid. And, I
19 think if they want to hold up this article as evidence
20 that everything is okay, that's just not true.

21 WITNESS LOWE: Hang on, hang on --
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22 MR. PATCH: Wait a minute. Wait a
23 minute, please, Mr. Lowe.

24 WITNESS LOWE: Sorry.

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1 MR. PATCH: I think Mr. Roth just made a
2 statement that is not backed up by the record, and Mr.
3 Lowe is doing his best to try to correct that. But I
4 don't know that that's necessary, but I --

5 CHAIRMAN GETZ: Well, Mr. Roth is making
6 an argument. Do you want to --

7 MR. ROTH: I'll withdraw the question.

8 CHAIRMAN GETZ: But you have an
9 opportunity for recross, if you'd like to pursue this
10 line.

11 MR. PATCH: Okay.

12 MR. ROTH: I withdrew the question.

13 BY MR. PATCH:

14 Q. Mr. Lowe, is there --

15 A. Can I just make a statement?

16 CHAIRMAN GETZ: Well, we've heard the
17 question. The question is in the record. I'm going to
18 allow recross on this, and then we'll be done.

19 WITNESS LOWE: Sorry.

20 BY MR. PATCH:

21 Q. Is there something you'd like to say in response to a
22 statement that Mr. Roth made?

23 A. I mean, I was just going to -- I'll say two things.
24 One, you know, I assume there were plenty of articles
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1 about KR, you know, a year ago. This is an article in
2 2009. So, I'm not surprised it doesn't deal with KR.
3 Secondly, a bonding requirement in a construction
4 contract is to protect us. Whether or not, if we had a
5 bonding requirement, we would have been able to make
6 the claim. What that bonding requirement doesn't do is
7 necessarily satisfy KR's obligations with its
8 subcontractors. So, the fact that we messed up a
9 little bit on the credit review of KR for our contract,
10 has nothing to do with whether or not the
11 subcontractors get paid. I would say, the contractors,
12 I would expect to do their own credit review of KR when
13 they entered into agreements with them to do work for
14 KR. And, that's nothing to do with how we would do it.
15 There's no linkage.

16 CHAIRMAN GETZ: Is there anything from
17 the Committee?

18 (No verbal response)

19 CHAIRMAN GETZ: Okay. Hearing nothing,
20 then the witness is excused. Thank you.

21 WITNESS LOWE: Thank you.

22 MR. ROTH: Thank you.

23 CHAIRMAN GETZ: Okay. Before we close
24 for today, I want to address two outstanding procedural
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1 issues. One is, we have, with respect to Counsel for the
2 Public, has asked that we consider the State of the Birds
3 2009 Report, I think prepared by the Department of the
4 Interior, and we also had a request, Ms. Keene has asked

5 that a document be added to the record, specifically a
6 Settlement Agreement regarding allegations of misconduct
7 by Mr. LaFrance that were brought before the State Board
8 of Licensure for Professional Engineers. Arguments have
9 been made opposing the introduction of the documents in
10 relation to the close of the hearings, and whether the
11 documents were being filed either as evidence presented at
12 public hearing or information from the public. With
13 respect to the former argument, regarding the closing of
14 the hearings, those arguments are moot, in light of the
15 fact that we had and held the hearing today. And, there
16 was the secondary argument, there is some debate, I think,
17 about the proper interpretation of RSA 162-H:10, III,
18 which speaks about that the Committee "shall consider and
19 weigh all evidence presented at public hearings and it
20 shall consider and weigh written information and reports
21 submitted to it by the members of the public before during
22 and subsequent to public hearings." And, it's not clear
23 what either Counsel for the Public or Ms. Keene actually
24 intended in this regard. There was no motion that was

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1 filed with respect to either of these documents. But the
2 information is relevant, though, it's clearly late-filed
3 and it was not part of testimony and used in
4 cross-examination. And, as I noted, it wasn't part of any
5 motion. But, nevertheless, I'm going to permit
6 introduction into the record, and we'll give the documents
7 the next exhibit numbers respectively for Public Counsel
8 and Ms. Keene.

9 Now, obviously, there's considerations

10 of the appropriate weight to be accorded to the documents.
11 Of course, we haven't seen the author of the State of the
12 Birds Report and has not been made available for
13 cross-examination, so that report does not merit the same
14 weight as evidence that's been provided in the hearing and
15 has been subject to cross-examination. And, with respect
16 to the Settlement Agreement from the Board of Licensure,
17 I've seen no argument about its authenticity, and the
18 parties can argue in their briefs what inferences they
19 think should be drawn from the document. So, they will be
20 part of the record in this proceeding.

21 (The documents, as described, were
22 herewith marked as Exhibit PC-18 and
23 KK-3, respectively, and entered into the
24 record.)

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1 CHAIRMAN GETZ: Mr. Iacopino, are there
2 any outstanding procedural motions or issues that you're
3 aware of that need to be resolved before we get to briefs?
4 Are the parties --

5 MR. IACOPI NO: I think there may be one
6 confidentiality request that was made by the Applicant at
7 one point.

8 CHAIRMAN GETZ: I believe there was a
9 confidentiality motion filed on the 23rd, but I don't
10 think that needs to be resolved prior to the issuance of
11 briefs, and we can --

12 MR. PATCH: I think it was in connection
13 with a response to record requests. And, so, I think that
14 could be addressed in the order.

15 MR. IACOPI NO: That's the only one that

16 I'm --

17 CHAIRMAN GETZ: And, the status of the
18 outstanding record requests?

19 MR. PATCH: I think we've answer them
20 all. That's our understanding.

21 CHAIRMAN GETZ: Anything, Ms. Linowes or
22 Mr. Roth, that's outstanding that we need to address?

23 MR. ROTH: Not that I can think of right
24 now. You better close the record quick.

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1 CHAIRMAN GETZ: Okay. Then, hearing
2 nothing, and acknowledging that the record requests have
3 all been filed, and there is no dispute of that, the
4 record is closed. And, we will await the filing of briefs
5 and schedule dates for deliberations. Thank you,
6 everyone.

7 MR. ROTH: Thank you.

8 MR. PATCH: Thank you.

9 (Whereupon the hearing ended at 4:51
10 p.m.)

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