

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3 April 17, 2009 - 10:16 a.m.  
4 21 South Fruit Street DAY I  
5 Suite 10  
6 Concord, New Hampshire

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

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

25 \* \* \*

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

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

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

2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the public meeting in Site  
4 Evaluation Committee Docket 2008-04. This is regarding  
5 the Application of Granite Reliable Power for a  
6 Certificate of Site and Facility to construct and operate  
7 the Granite Reliable Wind Park. We issued a notice of the  
8 public meeting on April 10, indicating that we would  
9 conduct deliberations today. And, the Notice of  
10 Deliberative Session indicates that the meeting is open to  
11 all parties to the proceeding and to the public. However,  
12 the Committee will not take testimony or public comment at  
13 this meeting. The deliberative session may be recessed  
14 and continued at the call of the Chair.

15 Let me say a few words about how we  
16 intend to proceed today. But first I'll note for the  
17 record, at the moment Director Scott is here, as is  
18 Mr. Northrop from Energy & Planning, Mr. Harrington from  
19 the PUC, Dr. Kent from Resources & Economic Development,  
20 as am I, the Chair of the PUC. Not present at the moment  
21 are Mr. Normandeau, who is at a Fiscal Committee meeting  
22 at the State House and Mr. Janelle is at a meeting  
23 concerning Stimulus Funds, and he's on his way.

24 So, we have a quorum that is present to

1 open the meeting today. And, this is how we will proceed.  
2 We have a motion that was filed yesterday by Ms. Linowes,  
3 on behalf of the Industrial Wind Action Group, moving that  
4 the Committee remove Mr. Normandeau from the Site  
5 Evaluation Committee and bar him from participating in  
6 deliberations. Inasmuch as the motion was filed  
7 yesterday, and I'll note that the cover letter and the  
8 motion indicates that Mr. Odell, Ms. Keene, and Mr. Keene  
9 support the motion. And, that the New Hampshire Fish &  
10 Game and Appalachian Mountain Club oppose the motion.  
11 There's no indication as to the position of Clean Power or  
12 the New Hampshire Wind Energy Association. I would note  
13 that I think it's appropriate, as a matter of fairness,  
14 that the Applicant, if it wants to make a brief -- I  
15 assume you have a position on this motion, we will  
16 entertain a brief response orally. But let me also note  
17 what our intention is with respect to this schedule.

18 After we hear from what the Applicant  
19 may have to say in response to this motion by Ms. Linowes,  
20 we're going to recess to consult with counsel, which is  
21 consistent with RSA 91-A:2, the State Open Meetings Law,  
22 to consider what the legal alternatives presented to the  
23 Committee are with respect to the motion by Ms. Linowes.  
24 We will not begin deliberations today until all seven

1 members of the Subcommittee are present. And, the way we  
2 intend to conduct the deliberative session today is we're  
3 going to go one-by-one through the findings that are

4 required under RSA 162-H, and each of the Committee  
5 members will be, in turn, summarizing the positions  
6 relative to each finding. And, we'll be discussing the  
7 issues that are raised relative to each of the finding.  
8 And, our hope is to reach conclusions on each of the --  
9 each of the required findings under the statute.

10 In terms of timing, I cannot give you  
11 any forecast or predictions on how long this is going to  
12 take. Today our intention will be to recess at various  
13 times during the day, and we'll be taking, of course, a  
14 lunch recess. And, we've already reserved Monday as a  
15 second day, if it's required.

16 So, I guess I would turn to the members  
17 of the Subcommittee, is there anything you want to raise  
18 before we hear from the Applicant, if they want to respond  
19 to the motion with respect to Director Normandeau?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Hearing nothing,  
22 then, Mr. Patch.

23 MR. PATCH: Thank you, Mr. Chairman,  
24 members of the Committee. Doug Patch, from Orr & Reno, on  
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1 behalf of the Applicant. The Applicant is opposed to the  
2 motion. And, I think it's important to state a couple of  
3 reasons for that. First of all, from a procedural  
4 perspective, the New Hampshire Supreme Court has held  
5 that, when a party moves for recusal of a member of a city  
6 council, that party must do so at the earliest possible  
7 time, because trial forums should have a full opportunity  
8 to come to sound conclusions and to correct errors in the

9 first instance, and said as well "this is only fair to the  
10 trial forums and the appellate courts". And, I cite the  
11 New Hampshire Supreme Court case of Appeal of Cheney, 130  
12 New Hampshire 589, at Page 594. It's a 1988 case. And,  
13 that case quotes Sklar Realty versus Town of Merrimack, a  
14 1984 case, 125 New Hampshire 321, at Page 328. In the  
15 Appeal of Cheney case, the plaintiff had requested  
16 recusal, but only after the Council had concluded its  
17 hearings. And, in that case, the Court said "interested  
18 parties are entitled to object to any error they perceive  
19 in governmental proceedings, but they are not entitled to  
20 take later advantage of error that they could have  
21 discovered or chose to ignore at the very moment when it  
22 could have been corrected." The New Hampshire Practice  
23 Series cites that case for the assertion that "a party who  
24 fails to object to a panel member before the hearing

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1 begins will be deemed to have waived objection", and  
2 that's New Hampshire Practice, Civil Practice and  
3 Procedures, Section 64.14. It's our contention that Ms.  
4 Linowes is relying on information that she knew prior to  
5 the start of the hearings, and, therefore, her motion is  
6 untimely.

7 I would also like to cite to the fact  
8 that the language of the rule Site 202.03 appears to  
9 resemble closely the law that has been applied in several  
10 cases. And that, again, I cite to that section 64.14 of  
11 New Hampshire Practice. There's also a case, State of New  
12 Hampshire versus State Board of Parole, 115 New Hampshire  
13 414, a 1975 case, that essentially says "recusal is

14 required where such official votes on a matter in which he  
15 has a direct, personal or pecuniary interest." And, I  
16 don't believe that applies at all in this particular  
17 situation.

18 Similarly, Atherton versus Concord, 109  
19 New Hampshire 164, a 1968 case, and State of New  
20 Hampshire, 115, at Page 422, which says "To require  
21 disqualification, the interest of the official must be  
22 immediate, definite, and capable of demonstration, not  
23 remote, uncertain, contingent, and speculative."

24 And, so, therefore, the Applicant  
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1 believes that, on a procedural basis, the motion is  
2 defective. And, then, substantively, we don't believe  
3 that she has stated a basis for Director Normandeau to  
4 recuse himself. Thank you.

5 CHAIRMAN GETZ: Okay. Thank you.  
6 Mr. Roth, does Counsel for the Public have a position on  
7 the motion from Ms. Linowes?

8 MR. ROTH: No, Mr. Chairman, he doesn't.

9 CHAIRMAN GETZ: Okay. Then, we will  
10 recess to, as I said before, consult with counsel about  
11 the motion to remove. And, we will resume when all seven  
12 members of the Committee are present. Thank you.

13 (Recess taken at 10:26 a.m. and the  
14 deliberative session resumed at 11:36  
15 a.m.)

16 CHAIRMAN GETZ: Okay. We are resuming  
17 the public meeting in Site Evaluation Committee Docket  
18 2008-04. And, we'll take up consideration of the motion  
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19 by Ms. Linowes to remove Mr. Normandeau and to bar him  
20 from participating in the deliberations. I'm going to  
21 review some of the relevant citations, and then proceed to  
22 address the motion. First, I'll note that RSA 162-H:3 is  
23 the part of the Site Evaluation Committee statute dealing  
24 with the membership of the Committee. And, that section

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1 indicates that the Site Evaluation Committee shall consist  
2 of a number of persons in state government, including,  
3 among others, Commissioner of Department of Environmental  
4 Services, Commissioner of DRED, and Commissioner of  
5 Department of Health, and I won't go through all of the  
6 members, but it does include the Director, the Executive  
7 Director of the Fish & Game Department, and in that  
8 section does not make any provision for a designee.

9 In RSA 162-H:4, V(b) speaks to the  
10 membership of subcommittees formed to review applications  
11 for renewable projects. That provision notes that, among  
12 other things, "the subcommittee shall include at least  
13 three members selected from among the Department of  
14 Environmental Services, the Department of Resources and  
15 Economic Development, and the Fish & Game Department".  
16 I'll also note, in this proceeding, that under his  
17 authority to designate the members of the subcommittee,  
18 Commissioner Burack from DES, who is also the Chair of the  
19 Site Evaluation Committee, designated Director Normandeau  
20 to participate as a member of this subcommittee.

21 Now, I think there is some question  
22 whether the motion filed by Ms. Linowes is a proper motion  
23 under the Committee's Site Evaluation Committee rules.

24 That the applicable rule, 203.03, concerns withdrawal of  
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1 the presiding officer or a committee member. And, it  
2 states that "Upon his or her own initiative or upon the  
3 motion of any party, a member of the Committee shall, for  
4 good cause, withdraw from a proceeding to consider an  
5 application or petition". And, it goes on to state that  
6 "good cause shall exist if a Committee member has (1) a  
7 direct interest in the outcome of the proceeding,  
8 including, but not limited to, a financial or family  
9 relationship within the third degree, a relationship with  
10 any party or representative; (2) made statements or  
11 engaged in behavior which a reasonable person would  
12 believe indicates that he or she has prejudged the facts  
13 of the case; or (3) personally believes he or she cannot  
14 fairly judge the facts of the case." And, the last  
15 subsection of that of 202.03 says that "mere knowledge of  
16 the issues, the parties, or any witness shall not  
17 constitute good cause for withdrawal".

18 And, I'm going to speak to some of the  
19 positions that are taken in the motion. First, Ms.  
20 Linowes argues that RSA 673:14, which is Chapter 673 of  
21 the RSAs dealing with local land use boards, and  
22 subsection 14 deals with disqualification of a member.  
23 And, the motion argues that that subsection of the RSAs  
24 controls, and the Committee is subject to that. And, my  
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1 reading of this, of the statute, it appears clear on the

2 face of the plain language, it applies to local land use  
3 boards. And, it sets out a defining list, including  
4 zoning boards of adjustments, building code boards of  
5 appeals, planning boards, heritage commissions or historic  
6 district commissions. And, it seems to be limited to  
7 those types of Committees. And, does not, on its face,  
8 appear to extend to a statewide committee, such as the  
9 Site Evaluation Committee.

10 She also cites to the Winslow v. Town of  
11 Holderness case, 125 N.H. -- well, actually, the motion  
12 says "714", but the correct cite is "125 N.H. 262", a case  
13 issued in 1980 -- an opinion issued in 1984 by the Supreme  
14 Court, talks about when quasi-judicial members should be  
15 disqualified. And, I'll note a clear distinction in that  
16 case, compared to the proceeding today, in that case the  
17 planning board member had, in his personal capacity,  
18 appears to have spoken out against a project that was  
19 before the planning board. And, that certainly is not the  
20 facts of the case before us here that's subject to this  
21 motion.

22 And, I also note that in the motion that  
23 the -- cites us Rule 202.03, argues that "good cause  
24 exists if a direct interest in the outcome of the

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1 proceeding is including, but not limited to, a financial  
2 or family relationship." Basically, I take the movant to  
3 be arguing there for a per se disqualification. And, if  
4 we turn to the Supreme Court's rulings in Appeal of Grimm,  
5 speaks to per se disqualifications due to the probability  
6 of unfairness and it applies when the trier has pecuniary

7 interest in the outcome, which it would be a direct  
8 interest, and that is not the case before us, has become  
9 personally embroiled in criticism from a party before him,  
10 or when he has heard evidence in secret at a prior  
11 proceeding, or when he is related to a party. And, it  
12 does not appear here that any of the facts would qualify  
13 as a basis for a per se disqualification.

14 And, that links back as well to the good  
15 cause under the Site Committee's rule, where there's a --  
16 a good cause exists if there's a direct interest, and that  
17 has not been shown to exist, or made statements or engaged  
18 in behavior that a reasonable person would believe  
19 indicates that he or she has prejudged the facts, and that  
20 does not appear to be the case either.

21 Now, the motion also speaks to the  
22 benefits derived from the Mitigation Settlement that would  
23 accrue to Fish & Game. As I understand the Mitigation  
24 Settlement, there will be certain payments made to Fish &  
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1 Game, but, in both cases, the payments are linked to the  
2 effects of mitigating -- linked to mitigating effects of  
3 the project in areas related to Fish & Game's duty as an  
4 agency. And, I do not take those to be benefits of a  
5 nature that would require a per se disqualification of  
6 Director Normandeau. Those are agreements or provisions  
7 of the Settlement Agreement, the Mitigation Plan, that go  
8 to the professional responsibilities and duties of Fish &  
9 Game as an agency.

10 I also note that there -- So, in  
11 summary, with respect to substantive issues, I do not see

12 that there are any per se disqualifications. And, I'll  
13 note as well that the structure of the Site Evaluation  
14 Committee presumes that there will be members of the  
15 Committee acting on applications before it that will  
16 relate to subject matters relative to the duties and  
17 obligations of the agency. And, you know, taken to its  
18 logical extension, the argument by Ms. Linowes would  
19 require that, in any case, where an agency were to take an  
20 active role adverse to any party in any case, that no  
21 member of that agency could sit on the subcommittee. And,  
22 I don't find that there's any basis, in a review of RSA  
23 162-H, that would lead to a conclusion that that is what  
24 the Legislature intended. Rather, I think it's a fair  
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1 conclusion that the opposite is intended.

2 I'll also note, with respect to  
3 procedurally, in terms of the timing of the motion that  
4 was made yesterday in this case, the New Hampshire Supreme  
5 Court has ruled in the case of Laura Fox versus the Town  
6 of Greenland, that "disqualification issues should be  
7 raised at the earliest possible time, because trial forums  
8 should have a full opportunity to come to sound  
9 conclusions and to correct errors in the first instance."  
10 With respect to the motion, it at least could have been  
11 filed as early as March 11th, when the Mitigation  
12 Settlement was filed during the hearings. And, arguably,  
13 as far back as December, when Fish & Game took an active  
14 role in this proceeding. And, to the extent there is any  
15 viable argument that the Director of Fish & Game should  
16 not participate in this proceeding, it didn't occur as of

17 the time of the Mitigation Settlement, because his agency  
18 was taking active positions well prior to that. The only  
19 distinction is that the issues that were raised in  
20 testimony back in December were settled through the  
21 negotiation of a Mitigation Agreement with the Applicant  
22 and with Appalachian Mountain Club.

23 So, which gets us back to the Site  
24 Evaluation Committee rule. And, as presiding officer, I  
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1 would deny the motion to remove and to bar Director  
2 Normandeau, for all of the reasons that I have just  
3 discussed. There are substantive problems with the  
4 motion, there are procedural defects, and it's not  
5 consistent with the Commission's rule.

6 But I'd like to ask if, I guess  
7 Mr. Normandeau aside for the moment, if there are any  
8 members of the Subcommittee who would like to speak to the  
9 motion and my proposed ruling as presiding officer that  
10 the motion be denied?

11 (No verbal response)

12 CHAIRMAN GETZ: Okay. Hearing nothing,  
13 then my ruling is that the motion is denied. Now, it does  
14 leave one issue that, and I think it's important to turn  
15 to Director Normandeau. A proper motion, and I think this  
16 is actually consistent with the position taken by  
17 Ms. Keene in her brief, that asking that Director  
18 Normandeau recuse himself. Now, we've had on the record  
19 earlier in the proceeding Director Normandeau has  
20 indicated that he had erected a wall within his agency,  
21 and that he had no knowledge or control over the

22 negotiations taken by employees of Fish & Game or with  
23 respect to this proceeding, either in the first instance,  
24 with testimony, or with respect to the Mitigation

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1 Settlement. And, I'll note as well that that form of  
2 bifurcation within an agency is supported by the Supreme  
3 Court's ruling in a 1991 case concerning the Appeal of the  
4 Office of Consumer Advocate, with respect to a case that  
5 was heard before the Public Utilities Commission.

6 But I think we ultimately get to the  
7 issue under our rules, "does the Director personally  
8 believe he or she cannot fairly judge the facts of the  
9 case?" And, I think that's a personal call for the  
10 Director, and I think it's properly put to him as  
11 consistent with our rule, and as requested earlier by  
12 Ms. Keene. So, I would turn to Director Normandeau to  
13 address the issue of whether he can fairly judge the facts  
14 of the case.

15 DIR. NORMANDEAU: Thank you, Mr.  
16 Chairman. As much as I'd miss being here, I do believe I  
17 can fairly judge the case. I have no personal financial  
18 interest or predisposition in this case, no family  
19 relationships, not personally embroiled. And, so, I  
20 believe I can be impartial. Relative to my position with  
21 Fish & Game, as I had said earlier, I was not involved in  
22 that Mitigation Agreement, and kept myself out of it. I  
23 was not aware of the particulars of it until everyone on  
24 this Committee was. I noticed that when, in the initial

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1 discussions or in the testimony, when Fish & Game staff  
2 had serious concerns about the Application, I wasn't being  
3 asked to be removed at that time. So, I guess it's a  
4 matter of perspective.

5 And, to just go to the heart of the  
6 matter, the idea that somehow this Mitigation Plan is a  
7 boon for the agency somehow beyond simply a benefit to  
8 resolve issues for this particular application, I can  
9 assure the public that having a dedicated account for a  
10 particular -- another dedicated account for a particular  
11 purpose, that cannot be used for general purposes of the  
12 agency, is just, in my view of having to administer these  
13 things, something of an aggravation, as opposed to a  
14 benefit.

15 And, additionally, the Department today  
16 administers some 60,000 acres of land around the state.  
17 And, again, while I recognize this package is something  
18 that's of a benefit directly as mitigation for this  
19 project, the idea that this additional property might be  
20 some boon to the agency that would skew my decisions in  
21 this matter, it would be -- that would not be an accurate  
22 assessment of the situation. We have quite a plateful of  
23 properties as it is that we have to deal with.

24 And, with that, I would respectfully  
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1 decline to recuse myself from the discussion.

2 CHAIRMAN GETZ: Okay. Thank you,  
3 Director Normandeau. Is there any further comment or  
4 anything to address among the members of the subcommittee  
5 with respect to these issues?

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6 (No verbal response)

7 CHAIRMAN GETZ: Okay. Hearing nothing,  
8 then it's 10 of 12. We have yet to begin deliberations.  
9 But we will take the lunch recess. We will resume at  
10 1:00. And, we will take up, as our first issue,  
11 financial, managerial and technical capability. And, we  
12 will then move through as expeditiously as possible with  
13 our review of all of the required findings.

14 (Whereupon the lunch recess was taken at  
15 Lunch 11:52 a.m. and the deliberations  
16 resumed at 1:15 p.m.)

17 CHAIRMAN GETZ: Okay. We're back on the  
18 record resuming the public meeting in docket 2008-04.  
19 And, we're going to take up first a discussion of the  
20 financial, technical, and managerial capability of the  
21 Applicant to construct and operate the proposed wind  
22 facility. And, I'm going to lead the discussion on this  
23 topic and summarize the arguments and the issues for both,  
24 on all sides of the issue. And, then, we'll have a

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1 discussion of the findings.

2 But I'll begin by referring to RSA  
3 162-H:16, IV. And, that statute indicates that the  
4 Committee must find that the site -- with respect to the  
5 site and facility that the "Applicant has adequate  
6 financial, technical, and managerial capability to assure  
7 construction and operation of the facility in continuing  
8 compliance with the terms and conditions of the  
9 certificate."

10 And, I'll begin by -- I'll go through  
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11 these issues essentially chronologically, and pointing to  
12 what's in the record in this proceeding, I'll include all  
13 three items, financial, technical, and managerial  
14 capability. But, when we get to a discussion, I would  
15 suggest that we take each of the three items separately.

16 So, looking to the Application that was  
17 filed last summer, Page 62 is the required description in  
18 detail of the Applicant's financial, technical, and  
19 managerial capability. And, among other things, the  
20 Applicant points out that "Noble was founded in  
21 August 2004 and commenced operations of its first  
22 windparks in March 2008." It indicates that "Noble has a  
23 development team of professionals engaged in activities,  
24 including site selection, market analysis, and

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1 acquisition, community relations, and permitting." And,  
2 it "has significant expertise in engineering,  
3 construction, operations and maintenance". And, it has  
4 "extensive experience" with project financing that allows  
5 "the Company to optimize its capital structure". The  
6 Application goes on to note that "Noble will arrange for  
7 the financing of the project through various potential  
8 sources and structures to provide capital for construction  
9 equipment and operations. And that, "Through the  
10 selection of the various financing alternatives generally  
11 available to wind developers, it will seek to maximize its  
12 rate of return on project investments."

13 I then turn to the testimony of the  
14 Chief Financial Officer, Mr. Lowe, that was filed along  
15 with the Application. Among other things, Mr. Lowe

16 asserts that "Noble has the financial capability to build,  
17 own and operate its windparks." It indicates that it  
18 "analyzes the cash flow available to projects before  
19 determining a financing strategy", and that it will  
20 "include its ability to sell electricity and the  
21 environmental attributes, namely, Renewable Energy  
22 Certificates, that would enable it to raise capital to  
23 support construction and operation of the project."

24 At that same time with the application,  
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1 we have testimony from Mr. Mandli, with respect to  
2 technical and managerial capability, and he generally  
3 points to the projects that the Company had undertaken in  
4 New York as evidence of such capabilities.

5 And, we have also the Company's  
6 supplemental testimony that was filed in February. Again,  
7 we have testimony from Mr. Lowe, along with Mr. Wood, with  
8 respect to the financial capability. And, that panel that  
9 we heard, Mr. Lowe and Mr. Wood, indicated that each of  
10 Noble's seven windparks have been project financed, which  
11 means that the capital raised to finance the project only  
12 has recourse to the assets and operations of the project,  
13 and that the revenue and production tax credits generated  
14 by windparks cover their operating costs and then service  
15 principal and interest payments prior to making  
16 distributions to equity investors. They also state that  
17 "the project finance methodology adopted by Noble is a  
18 tried and tested financing method that has been used to  
19 raise billions of dollars in capital in the U.S. power  
20 sector over the last 25 years. And, they assert that the

21 discipline required by project finance investors and  
22 lenders often imposes discipline on the project's  
23 commercial arrangements. And, they point to the fact that  
24 the Company has successfully financed and it operates

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1 seven separate windparks totally 726 megawatts of  
2 capacity, and has raised construction loans in amounts of  
3 \$485 million \$632 million, and \$100 million. They  
4 acknowledge that the current financial markets present  
5 significant challenges to financing the project, and they  
6 state that financing projects in such disruptive markets  
7 require significant planning and patience. And, they  
8 indicate that, by "planning", they mean being able to  
9 present to a group of financiers a comprehensive  
10 commercial plan, including off-take arrangements, permits,  
11 turbine supply, and operating arrangements. And, they  
12 also pointed out that their financing plan would have to  
13 be refined to address any components of the American  
14 Recovery & Reinvestment Act of 2009, the so-called  
15 "Stimulus Act". And, they stated that they would actively  
16 monitor finance markets and pursue providers of capitals  
17 -- provider of capital that they believe would be  
18 available on economically available terms.

19 Also, at the time of supplemental  
20 testimony, we had additional testimony by Mr. Mandli.  
21 And, similarly, he points to the Company's experience in  
22 New York as evidence of the Company's managerial and  
23 technical capability, and states that "each of Noble's  
24 wind plants is operating efficiently since start-up", and

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1 that "particularly projects in New York are operating at  
2 availability levels above 90 percent".

3 I'll next turn to the testimony that was  
4 filed in February by Mr. Sundstrom, on behalf of the  
5 Counsel for the Public. And, I'll note the conclusion of  
6 Mr. Sundstrom at that time was it is his opinion that  
7 "there was no financing plan for the project", and he  
8 stated that "the Applicant did not have the capability to  
9 fund the project on its balance sheet".

10 Next, I would point to the  
11 cross-examination of Mr. Sundstrom that occurred on March  
12 16th, and a number of statements that he made on the  
13 record that day. On Page 138, he -- Mr. Sundstrom  
14 concluded that "the Company has moved to current  
15 profitable operations this year", and he would classify  
16 the Noble as "having moved from being in the development  
17 stage to post development stage or operating cash flow".  
18 And, with respect to issues related to acquisition of a  
19 purchased power agreement, Mr. Sundstrom indicated that it  
20 is belief that the Company was doing the responsible thing  
21 in pursuing negotiations with respect to a purchased power  
22 agreement. He also, when asked a question, whether Noble  
23 has the capability to finance this project, he indicated,  
24 on Page 179, that "They certainly demonstrated last year

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1 the capability to do a large project financing. So,  
2 therefore, I do think that they have demonstrated in the  
3 past the ability to do that." And, he did observe again,

4 on Page 185, in response to a question by Mr. Harrington,  
5 that he thought that "this project looks like a very good  
6 project in this new world." He hadn't run it with old  
7 world financing, because of the unavailability of tax  
8 equity investors. But he did indicate that, when the  
9 banks come alive again and provide construction financing  
10 and term financing, it appeared to be a good project.

11 And, the final pieces of the  
12 cross-examination, I'll note that, with respect to a  
13 response to a question by Mr. Harrington, Mr. Harrington  
14 inquired about Mr. Sundstrom's testimony about there not  
15 being a financing plan, and he, Mr. Sundstrom, replied "At  
16 the time I wrote that, there was no plan that I had  
17 received. Subsequent to that, I have received a plan from  
18 the Company, and those are Scenarios A1 and A2, B1 and B2,  
19 located in supplemental testimony." And, that "there are  
20 plans that have a strategy for approaching the market and  
21 investors." He indicated that his previous testimony was  
22 time specific. And, then, finally, he expressed again his  
23 opinion that they -- that "they have the capability" --  
24 that "they have demonstrated, they, the Applicant, the  
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1 ability to finance the project in the past."

2 I'll now turn to the briefs that have  
3 been filed, beginning with the Applicant. The Applicant  
4 reiterates the position in its brief, essentially that  
5 "the evidence of the financial capability is demonstrated  
6 by bringing seven other projects to completion and  
7 obtaining financing for them", and that the -- "although  
8 the proposal is for limited recourse project financing,

9 that's the -- rather than to fund on the balance sheet of  
10 the parent company, project financings, as Mr. Sundstrom  
11 testified, are generally done this way." And, the brief  
12 also indicates, with respect to the difficulty in  
13 financial markets today, that its position that "the  
14 Stimulus Act is likely to stimulate investment and provide  
15 substantial financial support for the proposed project."  
16 It then concludes that it's -- "the Applicant has met the  
17 burden of showing by a preponderance of the evidence that  
18 it has adequate financial capability to own and operate  
19 this project, and that's shown by its 726 megawatts of  
20 wind projects in New York and in Texas." And, it makes  
21 similar arguments with respect to technical and managerial  
22 capability again, noting the megawatts of power in other  
23 states and the 484 wind turbines that it has in operation,  
24 and makes those similar arguments again on managerial

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1 capability.

2 The Counsel for the Public, in its  
3 brief, states that "It is undisputed that the Applicant  
4 has insufficient cash in its possession or in its parent  
5 entity to construct the project. It is also undisputed  
6 that the Applicant does not have loans or equity  
7 commitments lined up to finance construction and  
8 operation." It goes on to state that "Clearly, the  
9 Applicant has in the past financed projects of this size  
10 or greater, and has demonstrated significant financial  
11 capability for those projects in the past, the Applicant  
12 has not met its burden of showing that it possesses the  
13 requisite financial capability now, though it has in the

14 past, and may do so in the future.

15 And, with respect to adequate managerial  
16 and technical capabilities, Counsel for the Public states  
17 that "The Applicant is a relatively inexperienced  
18 developer in operating wind generated power plants, and  
19 has no experience operating a facility in an environment  
20 like this one." And, argues that "the Applicant hasn't  
21 met its evidentiary burden." But suggests that "operating  
22 conditions may resolve some of these questions favorably."

23 We have brief of Ms. Linowes. And, she  
24 sets forth, on Pages 22 to 24, a discussion of financial,  
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1 technical, and managerial capability. Notes that "the  
2 Company has constructed five wind energy facilities in New  
3 York", that "at different times facilities have had to be  
4 taken off line." That "two turbines in Altona had  
5 experienced failures." That "there had been numerous news  
6 reports of the Company's financial difficulties." And,  
7 she points to the issues of the mechanic's liens filed  
8 against the Company in New York, and notes that "Noble has  
9 not built a ridgeline wind energy facility", and "has not  
10 installed Vestas turbines before". And, concludes that  
11 "the Company has not indicated that it has the financial,  
12 managerial, or technical expertise".

13 And, finally, I'll note, on the  
14 documents that have been submitted, Ms. Keene pointed out  
15 in her brief that "the Company had no financing plan for  
16 the project, and the sponsor does not have the capability  
17 to fund the project on its balance sheet."

18 So, that's a summary of the arguments

19 that have been made in the case. And, so, let's take up  
20 first the issue of "financial capability". Now, the  
21 statute speaks to whether there's been, you know, we can  
22 find whether there is adequate financial capability to  
23 assure construction and operation. And, the statute does  
24 not give a definition of what that means. And, it's been  
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1 pointed out by a number of parties that the Company does  
2 not have the ability to finance this project off its  
3 balance sheet. And, my recollection that the Company has  
4 never indicated that it intended to do so.

5 The issue of whether -- well, I guess  
6 the first issue is, does "financial capability" require an  
7 Applicant to fund a project off its own balance sheet?"  
8 And, I don't understand the statute to require that. And,  
9 I don't think that there are any cases in which the Site  
10 Evaluation Committee has concluded that an Applicant is  
11 required to fund a project with its own cash or off its  
12 own balance sheet. So, then the issue becomes "is project  
13 financing an appropriate means to demonstrate capability?"  
14 And, in this case, it's clear that the Applicant has been  
15 able to fund projects through the project financing  
16 vehicle previously. And, I don't see any basis in the  
17 statute to conclude that such a means of financing a  
18 project is inappropriate.

19 So, then, we could look to the question  
20 of "capability". And, certainly, "capability", to my  
21 understanding, is a term that indicates a perspective  
22 ability of an entity to do something. There is a  
23 distinction that seems to be made by Counsel for the

24 Public and by his witness that the Applicant had the  
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1 capability previously, and may have the capability in the  
2 future, and the suggestion being that it does not have the  
3 capability now. And, I'm trying to understand what that  
4 might mean and what impact it would have on our decision  
5 and our necessary finding. And, the only conclusion I can  
6 come to in that regard is, because of the way the  
7 financial markets are, that it couldn't raise the money  
8 today and/or, for some -- that an applicant must show up  
9 at the Site Evaluation Committee, or at least by the time  
10 of our decision, with loan documents indicating that it  
11 has raised the money. And, I think both of those things  
12 are not contemplated by the statute.

13 So, then we have to look to -- the other  
14 issues are "what's the weighing of the evidence?" Our  
15 decision is based on the preponderance of the evidence.  
16 Has the Applicant shown by a preponderance of the evidence  
17 that or by the greater weight or made the better case that  
18 it is capable of financing this project? Or, have the  
19 other parties in opposition made a better case or  
20 demonstrated, basically, by a preponderance of evidence  
21 that they don't have the financial capability?

22 And, I would come to the conclusion that  
23 the Applicant has demonstrated financial capability by a  
24 preponderance of the evidence, and that the issues that

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1 have been raised in opposition to that are easily overcome  
2 by the fact that they have raised money in the past to

3 build substantial projects in hundreds of megawatts and  
4 hundreds of millions of dollars.

5 Now, I don't think -- I prefer not to do  
6 all these deliberations in a formal Robert's Rules of  
7 Order approach. So, I'm not going to make a motion in  
8 this respect. All I tried to do was summarize the  
9 arguments and indicate where it leads me. So, I guess, at  
10 this point, I'd like to turn to a discussion of the  
11 issues. If there's any pieces of this, one way or the  
12 other, that we should give some further consideration.  
13 And, Mr. Scott, you raised your hand?

14 DIR. SCOTT: I just want to probably  
15 elaborate a little bit more on the point I think that the  
16 Chair just made. When we look at the supplemental  
17 testimony of I think it's Mr. Wood, who's the Senior Vice  
18 President for Project Financing, we find in there that  
19 they have already funded seven wind projects -- windparks,  
20 rather. And, when you look at the amount they have  
21 already secured for loans for those, it's well over a  
22 billion dollars, as far as going back and looking to see  
23 what's already been done and the ability to finance it in  
24 the past. I just wanted to highlight that for the record.

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1 CHAIRMAN GETZ: Director Normandeau.

2 DIR. NORMANDEAU: Yes. Sort of along  
3 that same line, I think that, you know, if I may read  
4 between the lines a little bit, the finance issue relates  
5 to, if things don't work out exactly according to plan, do  
6 we get left holding the bag with a project that's not  
7 complete or whatnot. And, yet, there was some to-do made

8 when I believe it was Mr. Lowe came back about a cost  
9 overrun at one of the New York projects. And, in fact,  
10 the Applicant showed that, when that occurred, they  
11 actually brought, if I remember my numbers correctly, put  
12 60 million more in equity to get that project finished.  
13 And, which indicated to me that, that not only does their  
14 history show that they can get it done, but, if things  
15 don't exactly go according to plan, they have got the  
16 intestinal fortitude, if you will, to come up with the  
17 goods to wrap it up at the end of the day.

18 CHAIRMAN GETZ: Mr. Harrington.

19 MR. HARRINGTON: Yes. Just kind of  
20 going back to the initial question here about "whether the  
21 financing had to be off the balance sheet or project  
22 financing was acceptable?" I just want to go on the  
23 record agreeing with Chairman Getz. I think that the law  
24 does not specifically say "you need to finance it off your

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1 balance sheet", and clearly it was not intended to do  
2 that. This is a moderately sized project, maybe even a  
3 small sized project, based on energy costs, I mean, what  
4 it costs to produce energy facilities, that is estimated  
5 at \$280 million. Clearly, there's a potential to have a  
6 plant out there that could run half a million -- or, half  
7 a billion, even a billion, even more, and no one is going  
8 to finance that off of their books or off of their balance  
9 sheet. So, the intent of the law has to be that project  
10 financing is an acceptable method of doing it.

11 CHAIRMAN GETZ: Anyone else want to  
12 address any of the financial issues? Mr. Scott.

13 DIR. SCOTT: Moving beyond the funding  
14 off the books and the balance, which would imply then  
15 there's funding after that from others from the project, I  
16 guess I would opine, I suppose, to get funding prior to  
17 having a certificate from the SEC, I would question what  
18 bank would finance anybody without a certificate from the  
19 SEC first. I mean, that seems to be a prudent thing to  
20 have the certificate, if you're going to get outside  
21 financing.

22 And, with that, and, Mr. Chair, I don't  
23 know if we're at that point yet, but I'll direct you -- us  
24 to look at the supplemental testimony again, with

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1 Christopher Lowe and Jeffrey Wood. And, they actually  
2 recommend that it would -- a certificate condition,  
3 whereby which they would be willing to accept that  
4 prohibits commencement of construction until such time as  
5 all construction financing is in place. And, if that  
6 sounds appropriate, I think, given some of the concerns,  
7 for instance, Director Normandeau just alluded to, that I  
8 think some of the concern is "what if there is not  
9 financing, what happens? And, would the State be left, in  
10 other words, holding the bag?", I think, if I'm correct.

11 CHAIRMAN GETZ: Which I think may go to  
12 the issue of -- well, especially with respect to a  
13 condition. If the condition were that you can't begin  
14 construction until the loan was in place, then I guess  
15 that prevents the notion, realistic or unrealistic, that  
16 they would somehow -- that the Applicant somehow would  
17 begin construction without the financing in place, and

18 then that the project would be somehow half completed and  
19 we would, I guess, avoid that potentiality, no matter --  
20 as unrealistic as it may be, we would avoid it.

21 DIR. NORMANDEAU: Yes, I would agree  
22 with that. And, not -- you know, I could see perhaps a  
23 scenario where they believe financing is on the way, they  
24 have a permit in hand, and so they start in on it, with  
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1 the presumption that they're in good shape, and, in fact,  
2 it, you know, once they start ripping and tearing,  
3 something falls through on the deal. So, it would  
4 certainly be better, I would think, to have a condition  
5 that does demonstrate having financing prior to work on  
6 the ground commencing, just to preempt any jumping of the  
7 gun.

8 CHAIRMAN GETZ: Mr. Janelle.

9 MR. JANELLE: I guess I'd agree, you  
10 know, certainly, in order to get financing, you need a  
11 permit. But, prior to construction beginning, we need to  
12 make sure the funds are in place to complete the  
13 construction. And, I guess one concern I would have is we  
14 want to make sure that the funds are in place are enough  
15 to complete the construction, and they're based on actual  
16 costs, and not costs that could change or an overrun. We  
17 need to have a good handle on what those costs are prior  
18 to construction beginning.

19 CHAIRMAN GETZ: Okay. Anything else on  
20 the -- Mr. Northrop.

21 MR. NORTHROP: I'm sorry. Just along  
22 the line of a condition, the Applicant has proposed a

23 condition in their final brief, Attachment A, Condition E.  
24 "The Applicant shall not commence construction as  
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1 "commencement of construction" is defined in RSA 162-H:2,  
2 III, until such time as construction financing is in  
3 place. Nothing in this condition or in this order shall  
4 prohibit the owners of land on which the project is to be  
5 constructed, and continuing with logging activities in  
6 areas below 2,700 feet in elevation." Does that  
7 condition, would that satisfy concerns, or -- I don't know  
8 if we're in sort of a "condition writing" position now or  
9 --

10 CHAIRMAN GETZ: I guess we have a few  
11 opportunities, of ways to address this. We can go through  
12 it generally, and talk about conditions generally, and  
13 then maybe deal with all the conditions at the end in a  
14 more specific way, or we can take each issue and try to be  
15 as specific as possible about each issue. And, I'm not  
16 sure that one approach is better than another, and maybe,  
17 with some, it may vary issue by issue. But --

18 (No verbal response)

19 MR. NORTHROP: I would think that we  
20 sort of generally say "this ought to be a condition", and  
21 then at some point come back to it and actually do the  
22 specifics of it, as opposed to really trying to write the  
23 actual words of the condition right at this point. But  
24 that's just my thought.

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1 CHAIRMAN GETZ: Okay. Well, I think  
2 that makes sense. Dr. Kent.

3 DR. KENT: I have a caution. First we  
4 have to address the statute, which is, "do we agree, on  
5 this particular point, are they capable of financing?",  
6 before we start discussing conditions. Once we come to a  
7 mind on that, then it may be appropriate to address the  
8 conditions. And, to the first point, I would say that the  
9 two fundamental pieces of evidence I've heard, speaking to  
10 the capability of this company financially, is Noble's  
11 history of successfully financing wind projects, and the  
12 Public Counsel's financial expert testimony, to the effect  
13 that Noble has the capability to undertake a large project  
14 of this type.

15 CHAIRMAN GETZ: Mr. Harrington.

16 MR. HARRINGTON: Just to follow up on  
17 that. I was going to mention the same thing that Dr. Kent  
18 just said. Before we get to conditions, we ought to make  
19 sure we feel that they have the capability of doing it.  
20 And, I agree, I think they do. And, again, relying on  
21 Public Counsel's witness, just from my own notes, he had  
22 stated statement that he was comfortable with the  
23 financing now, as compared to when he first looked at it  
24 in advance of his appearance before the Committee. And,

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1 there's also a quote, he says "I think that, you know,  
2 this looks like a very good project in this new world."  
3 So, I think, if you look at what Noble presented, as well  
4 as the Public Counsel's witness on that, we can probably  
5 -- at least I believe that they are capable of financing

6 the project.

7 Now, having said that, I guess, I don't  
8 know if others want to comment on that, and then we could  
9 get onto the -- if everyone were to think that way or a  
10 majority, we could start thinking about conditions,  
11 because I would have some conditions attached to that.

12 CHAIRMAN GETZ: Well, let me make this  
13 proposal. Let's try to go through and make the findings,  
14 again, and then we can have two options there. We can  
15 take a sense of the Committee on each of the financings or  
16 we could actually vote and make the finding. And, then,  
17 let's go through the findings. And, I would say we would  
18 come back to fine-tune, to discuss and fine-tune  
19 conditions we think are necessary and appropriate.  
20 Because I'd like to see -- I'd like to try and get through  
21 generally as much as we can to get as a good picture as we  
22 can of where we are generally. And, then, you know, areas  
23 where we're in agreement, areas where we're in  
24 disagreement, areas that we can fine-tune, and areas where

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1 we need to make some -- if there's consensus or not  
2 consensus, majority/minority positions, and then see where  
3 we go in terms of conditions that may resolve some debate  
4 among us.

5 So does anybody have any real concern  
6 about proceeding in that way?

7 (No verbal response)

8 CHAIRMAN GETZ: Is there any preference  
9 for taking a sense or taking a vote?

10 MR. HARRINGTON: Yes. I'm shaking my

11 head "yes", Steve. I'm sorry. I think that's a good  
12 idea.

13 CHAIRMAN GETZ: To which?

14 MR. HARRINGTON: I would say, take a  
15 sense. And, if we seem to be in at least a good solid  
16 majority, then take a vote.

17 CHAIRMAN GETZ: Okay. All right. Well,  
18 then, what's the sense of the Committee on whether the  
19 Applicant has demonstrated the, I guess, financial  
20 capability? I'd ask everyone who thinks they have  
21 demonstrated their financial capability just to raise  
22 their hand?

23 (Show of hands.)

24 CHAIRMAN GETZ: And, it looks like we  
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1 have all seven members concluding that they have  
2 demonstrated financial capability. Well, then, let's -- I  
3 would say let's take a vote. I would move that we find  
4 that the Applicant has demonstrated the financial  
5 capability to assure construction and operation of the  
6 facility.

7 MR. HARRINGTON: Just a question on  
8 that. I would say, before we vote, because it looks like  
9 everyone is going to say "yes", I would just want to make  
10 sure that that motion had "subject to conditions to be  
11 determined at a later time", or however you want to put it  
12 in there. Because there are some conditions that I'd like  
13 to see before I could vote "yes".

14 CHAIRMAN GETZ: Okay. I will adopt that  
15 as a friendly amendment.

16 MR. HARRINGTON: Friendly it is.

17 CHAIRMAN GETZ: And, do we have a second  
18 to that motion as amended?

19 DIR. SCOTT: Second.

20 CHAIRMAN GETZ: Okay. All those in  
21 favor, signify their support by saying "aye"?

22 (Multiple members indicating "aye".)

23 CHAIRMAN GETZ: Any opposed?

24 (No verbal response)

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1 CHAIRMAN GETZ: I'm going to note for  
2 the record there were no opposed.

3 Okay. Let's turn to the "technical  
4 capability". And, I think the arguments are, you know, at  
5 least from the Applicant's perspective, the same. They  
6 contend that they have demonstrated the technical  
7 capability based on what has transpired in the  
8 construction of their facilities elsewhere. And, the  
9 arguments against that go to issues with problems with  
10 specific turbines.

11 And, it appears to me that the  
12 preponderance of the evidence would indicate that they  
13 have the technical capability. So, I guess I could ask by  
14 a show of hands what's the sense of the Subcommittee, if  
15 you think that they have demonstrated the technical  
16 capability, I'd ask you to raise your hand?

17 (Show of hands.)

18 CHAIRMAN GETZ: And, note that the sense  
19 of the Committee is that they have demonstrated technical  
20 capability. So, I would move that we find, subject to any

21 appropriate conditions, that the Applicant has  
22 demonstrated the technical capability to ensure  
23 construction and operation. Can I get a second?

24 MR. JANELLE: Second.

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1 CHAIRMAN GETZ: A second by Mr. Janelle.

2 MR. HARRINGTON: Just a question,  
3 without going back and looking through all my notes, I  
4 would like to add the same caveat about "subject to  
5 conditions that may be assigned at a later date"?

6 CHAIRMAN GETZ: I did that this time.

7 MR. HARRINGTON: Oh, you did? I wasn't  
8 paying attention. I was trying to find my notes. Sorry.  
9 I retract that statement.

10 CHAIRMAN GETZ: Okay. So, all those in  
11 favor of finding that the Applicant has demonstrated  
12 technical capabilities, subject to appropriate conditions,  
13 signify their support by saying "aye"?

14 (Multiple members indicating "aye".)

15 CHAIRMAN GETZ: Any opposed?

16 (No verbal response)

17 CHAIRMAN GETZ: Note for the record  
18 there are no opposed. So, that finding is unanimous.

19 So, finally, we have the issue of  
20 whether they have demonstrated managerial capability.  
21 And, again, the argument, from the Applicant's  
22 perspective, is based on their track record in other  
23 states. And, the issues and argument against that go  
24 primarily to the existence of mechanic's liens in New

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1 York, an issue which we heard significant testimony about.  
2 And, also, I guess arguably goes to the issue of the --  
3 another issue we heard testimony about with respect to an  
4 investigation of wind developers in New York by the New  
5 York Attorney General. And, I think that latter issue may  
6 be -- may be more a separate condition that we may want to  
7 address, to the extent of conditions generally, I think it  
8 was one specifically raised by Ms. Keene about adopting  
9 some kind of ethical operations protocols, similar to what  
10 was raised in New York. But I guess my opinion would be  
11 that's an issue -- it's a general issue, separate from  
12 managerial capability.

13 But, in any case, I would conclude that  
14 the preponderance of the evidence is that the Applicant  
15 has demonstrated managerial capability. So, I would ask  
16 for a sense of -- Mr. Harrington.

17 MR. HARRINGTON: I just wanted to  
18 comment one thing on this, because I guess maybe it's kind  
19 of a pet peeve of mine. Both the Public Counsel and the  
20 Industrial Wind Action Group cited as an example of where  
21 Noble did not have adequate technical -- hadn't  
22 demonstrated technical capacities, that "they have not  
23 built on a ridgeline a wind facility before and had never  
24 installed these type of turbines". And, the other one

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1 says "relatively inexperienced developer and operator of  
2 wind generated power plants and no experience constructing  
3 and operating a facility in an environment like this one."

4 Well, if we were going to use that as a  
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5 criteria, no one would ever build anything any place,  
6 simply because somebody has to be first. So, I think, if  
7 you had experience building wind facilities in other  
8 locations, that's clearly the best you're going to get  
9 towards building them in a new unique location.

10 So, I'd just like to comment that I  
11 think those two arguments don't hold any water.

12 CHAIRMAN GETZ: Okay. Well, then, let's  
13 take a second then to -- are there any other statements or  
14 any discussion about technical and managerial  
15 capabilities, with respect to those kinds of issues?  
16 Because, I mean, following up on what Mr. Harrington is  
17 saying, I think there could be an argument to be  
18 constructed, if this was the Company's first foray into  
19 deep-water offshore wind construction, clearly, that's  
20 something of a very different nature than the projects  
21 that they have built in New York and here that would cause  
22 me concern.

23 So, I guess I have a similar conclusion  
24 to Mr. Harrington. That the nature of the construction is  
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1 not so different as to lead one to conclude that they lack  
2 the technical or managerial capability because it's on a  
3 ridgeline. But --

4 MR. HARRINGTON: Just if I could follow  
5 up? Even more, I think I was trying to address what the  
6 intent of the law was. Somebody has to be first,  
7 regardless of what it is. So, if we were to say that,  
8 "because this company has not built something similar to  
9 this in the past, then they're not qualified to build it

10 now", then you'd never get anything built. Because  
11 someone built the first wind farm offshore, someone built  
12 the first wind farm onshore, someone built the first coal  
13 plant, someone built the first hydroelectric plant. So,  
14 somebody has to go first. So, I think, to read the  
15 statute and say that "that provides a justification for  
16 denying the permit", I don't think is the intent of the  
17 statute.

18 CHAIRMAN GETZ: Any other discussion on  
19 -- Dr. Kent.

20 DR. KENT: Two statements in the  
21 Application and the testimony by the Applicant moderate my  
22 concerns on this issue. One is their offer to hire a  
23 construction company with relevant experience to high  
24 elevation work. And, secondly, their willingness to

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1 obtain a site suitability analysis from Vestas. Thank  
2 you.

3 CHAIRMAN GETZ: Anything further?  
4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Then, let's, I'm  
6 not quite sure where I was, but I believe, in case I  
7 haven't done so already, let me make a motion that we  
8 find, subject to appropriate conditions, that the  
9 Applicant has demonstrated the managerial capability to  
10 assure construction and operation.

11 And, I would ask all who support that --  
12 ask all who support -- well, let me get a second.

13 MR. NORTHROP: I'll second.

14 CHAIRMAN GETZ: You'll second. All

15 those in favor of the motion, please signify their support  
16 by saying "aye"?

17 (Multiple members indicating "aye".)

18 CHAIRMAN GETZ: Any opposed?

19 (No verbal response)

20 CHAIRMAN GETZ: None opposed. So, the  
21 motion passes. Okay. Then, again, I guess consistent  
22 with what we've been saying then, we'll come back to  
23 revisit in some detail the conditions that we want to --  
24 we think are appropriate to impose on this, and other

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1 issues.

2 So, the next topic then is whether the  
3 -- under RSA 162-H:16, IV(b), the Committee must find that  
4 the site and facility "will not unduly interfere with the  
5 orderly development of the region with due consideration  
6 having been given to the views of municipal and regional  
7 planning commissions and municipal governing bodies."

8 And, Mr. Northrop will summarize the  
9 issues and positions with respect to orderly development.

10 MR. NORTHROP: Thanks, Mr. Chairman.  
11 Please bear with me, because I haven't done this before.  
12 And, I would like the help and support of the rest of the  
13 Subcommittee.

14 Regarding the orderly development of the  
15 region, I see four areas or four subject areas: One is  
16 local authority; two are property values; and the third is  
17 the Coos Loop. And, if any of these are really not  
18 germane to this subject area, the orderly development of  
19 the region, you know, let me know and we can address those

20 in another section.

21                   Regarding the first, the local  
22 authority, Coos County is the regulatory agency for the  
23 unincorporated towns or the unincorporated places where  
24 the project will be located, except for the Town of  
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1 Dummer. And, the Town of Dummer has local land use  
2 regulations that they administer. But, for the  
3 unincorporated places, it's Coos County. The project is  
4 consistent with the 2006 Coos County Master Plan, which  
5 encourages the development of wind power projects and  
6 other alternative energy development, where they can be  
7 undertaken in an environmentally sensitive manner. The  
8 Coos County Planning Board has supported the project by a  
9 vote on September 23rd, 2008. The Coos County  
10 Commissioners have also voted to support the project.  
11 And, in the prefiled testimony of Mr. Decker and Mr.  
12 Lyons, it was indicated that the Coos County Delegation,  
13 which are the members of the New Hampshire House of  
14 Representatives from Coos County, adopted a resolution in  
15 support of the project on December 8th, 2007.

16                   The Town of Dummer is in support of the  
17 project, and has entered into an agreement with the  
18 Applicant concerning project components in the town. And,  
19 the Applicant has proposed that that be included as a  
20 condition of approval, which we can address later.

21                   And, at this point, there's one question  
22 I have for the Committee or you can help me out. I think  
23 that there was a letter from the -- from Tara Bamford, the  
24 Director of the Upper Valley Lake Sunapee Regional

1 Planning Commission. And, I have not seen that, and I'm  
2 not sure if it was part of the information that I got or  
3 if it may have been something submitted before I got on  
4 the Committee. So, I'm -- does anyone on the Committee,  
5 are you familiar at all with that letter? I think it was  
6 referred to in Ms. Keene's brief, her closing brief. It  
7 was referred to on Page 22 in her brief. I think that the  
8 date of the letter was November -- or, excuse me, yes,  
9 November 14th, 2008.

10 CHAIRMAN GETZ: Well, I'll turn to  
11 counsel.

12 MR. IACOPINO: Yes. What that -- I  
13 think what she's referring to is a letter that we received  
14 sometime after November 14th, but dated "November 14th",  
15 from the North Country Council. It is a three-page  
16 letter, which discusses it being a working landscape, as  
17 is quoted by Ms. Keene. This is actually technically in  
18 our file, I don't believe this was ever given an exhibit  
19 number, but it was filed with the progress reports that  
20 came from the various State agencies. And, they have, in  
21 that letter, I guess the crux of it is that there are  
22 certain questions and comments that they address, they  
23 address some visual impacts, and caution the Committee to  
24 weigh them carefully. And, they rely on -- well, that's

1 what they do there. And, there's a discussion of that in  
2 the letter that's probably better for you all as the

3 policy makers to look at and weigh, rather than me.

4 There's also concerns about the high  
5 elevation mitigation. And, of course, this was before the  
6 High Elevation Mitigation Plan, which is Exhibit 48, was  
7 presented to the Committee. And, they express concerns  
8 about decommissioning. And, also concerns about the whole  
9 wood versus wind issue, they express some reservation  
10 about what the best resolution of that is. And, suggest  
11 that the Committee should seek more input from the  
12 region's economic development leaders with respect to  
13 that.

14 And, then, they say "there's been no  
15 public progress up to this point." Of course, that was  
16 November 14th. And, after that, this Committee did go  
17 through its entire public process that has gotten us here  
18 today. I think that's the letter that Ms. Keene quoted  
19 from in her brief.

20 And, you know, that's sort of a summary  
21 of it. I don't know if we have physical paper copies of  
22 it with us. I'm sure that I probably do in my materials.  
23 I can find it and pass it around, if you'd like?

24 CHAIRMAN GETZ: Well, I know I have a  
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1 copy in the other room. But let's, for purposes of this  
2 discussion, and I guess it's a question of whether we can  
3 move on with a discussion and get copies later, or should  
4 we take a brief recess and get copies now, and then  
5 continue with the discussion?

6 MR. NORTHROP: Well, in just in what Mr.  
7 Iacopino said, and I just -- Mr. Scott also has it on his

8 laptop, so I've been able to glance at it briefly. But I  
9 think at least that there was a -- there was input from  
10 the Regional Planning Commission, and I misquoted, it's  
11 not the Upper Valley Lake Sunapee Regional Planning  
12 Commission, it's the North Country Council. So, at least  
13 North Country Council was aware of the project, had  
14 submitted those comments, and apparently have not voted  
15 one way or the other to approve or disapprove, but at  
16 least they raised some issues and showed some concern  
17 there.

18 So that, with the North Country Council  
19 and the Coos County Planning Board and Coos County  
20 Commissioners, the Coos County Delegation, and the Town of  
21 Dummer, that I think is the local authority, the local --

22 MR. IACOPI NO: Regional Planning  
23 Commission.

24 MR. NORTHROP: -- the municipal -- that  
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1 would be the municipal governing bodies and the  
2 municipality of the Town of Dummer, and the Regional  
3 Planning Commission.

4 CHAIRMAN GETZ: Well, and I guess let me  
5 just observe in this respect, at least as how I would  
6 interpret the statute. It says that we must make a  
7 finding whether it would "unduly interfere with the  
8 orderly development of the region with due consideration  
9 having been given to the views" of the local bodies. And,  
10 I think "due consideration" can mean we agree, we  
11 disagree, but at least that we've considered it, and given  
12 it the appropriate weight and come to a conclusion that we

13 think it's appropriate based on the evidence.

14 MR. NORTHRUP: Uh-huh.

15 CHAIRMAN GETZ: So, I think what you've  
16 done is put in the record that, you know, the views, and  
17 we will give them due consideration.

18 MR. NORTHRUP: Okay. That's the first  
19 of the sort of three issues that I see surrounding  
20 "orderly development of the region".

21 The second issue is property values.  
22 And, in the Application, Section J, Part (b), which is on  
23 Page 98, the Applicant states that "Based on national  
24 studies, windparks have been shown to have no adverse  
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1 impacts on property values." And, that's supported by two  
2 appendices in the Application. One is "The Effect of Wind  
3 Development on Local Property Values", by Renewable Energy  
4 Policy Project. That is the Appendix 30a of the  
5 Application. And, the second is "Impacts of Windmill  
6 Visibility on Property Values in Madison County, New  
7 York", by Bard Center for Environmental Policy. And,  
8 that's in the Application in Appendix 30b.

9 In Ms. Keene's brief, closing brief or  
10 final brief, she makes a vague and unsupported references  
11 -- or, makes some vague and unsupported references to  
12 negative impacts, and she predicts a decline in second  
13 home values in the northern reaches of Coos County if the  
14 project is constructed. She didn't offer any support for  
15 that or studies, I think that's really more of a  
16 conclusion on her part.

17 The final area of the orderly

18 development of the region is the Coos County Loop. And,  
19 this is where I need help. My understanding, and correct  
20 me if I'm wrong, once the improvements are made to the  
21 Coos County Loop and the project goes on line, there will  
22 be sufficient capacity for other projects to tie in. And,  
23 is that -- does the Committee agree with that? Is that --  
24 that's my understanding. And, maybe Mr. Harrington has  
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1 more.

2 MR. HARRINGTON: Yes, maybe I can help  
3 out a little on this. You have to look at the way that  
4 the rules are written and how this applies. There's  
5 actually two different standards we're talking about. One  
6 is connecting under the minimum interconnection standard,  
7 which is how power plants basically connect, based on  
8 energy. And, then, there's also the Forward Capacity  
9 Market, which is a slightly different criteria. Let me  
10 start from the beginning, I guess.

11 CHAIRMAN GETZ: Well, before we do that,  
12 let me just make clear, this is the Independent System  
13 Operator of New England's rules --

14 MR. HARRINGTON: Rules, that's correct.  
15 Yes.

16 CHAIRMAN GETZ: -- that we're talking  
17 about. And, I just would caution, let's not go so far as  
18 we're testifying.

19 MR. HARRINGTON: No, no, no, I won't do  
20 that. But I just want to make it so that other members of  
21 the Committee understand that, as far as the development  
22 of that area, with regards to the loop go, we have one

23 piece of testimony already from Clean Power who said that  
24 their project that's proposed up there for I believe  
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1 around 28 megawatts would not be negatively affected  
2 should this wind project come online. And, in fact, with  
3 some of the documentation that was submitted by the  
4 Applicant, which I believe they got from Public Service  
5 and/or ISO-New England, it appears that, once the needed  
6 upgrades for this line were done, in order to allow this  
7 project to come in at 99 megawatts, there would actually  
8 be more spare capacity on the line than there was before  
9 that. So, this should have no impact or no negative  
10 impact on the ability to -- for other facilities up there  
11 to connect onto that Coos Loop. It makes it certainly no  
12 worse than it would be right now without the wind project.

13 CHAIRMAN GETZ: Let me say two things.  
14 First is, I guess I would have one quibble. It wasn't --  
15 Clean Power wasn't testimony, it was a statement they made  
16 in their closing statement. So, you know, so give that  
17 the weight that it is due.

18 The other is, I guess, generally, I  
19 think, Mr. Northrop, you're raising the issue, is "what's  
20 the breadth of the requirement here, "will not unduly  
21 interfere with the orderly development of the region"?  
22 How broadly we should read?" I mean, the statute talks  
23 about views of municipal and regional planning  
24 commissions, which would suggest that it's more in the  
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1 nature of land use and planning. But, you know, it's not

2       definitive on that point of how -- how broadly we would  
3       consider the issue of orderly development and whether we  
4       should be thinking about, "okay, how does this wind  
5       project then rank in and among other types of energy  
6       projects?" I guess is the issue that's raised.

7                       MR. NORTHRUP: Right. And, the reason I  
8       thought that it may, and maybe it shouldn't be in this  
9       finding area, the "orderly development of the region", is  
10      Public Counsel, in their final brief, recommends a  
11      condition that "the Applicant shall provide the  
12      Subcommittee with a completed system impact study from  
13      ISO-New England indicating no significant impacts to the  
14      system from the project after construction." So, I don't  
15      know if that's something we would necessarily need to  
16      consider as a condition or not. That's really why that --  
17      that recommendation of condition prompted me to think  
18      "well, maybe the ISO-New England, you know, the Coos Loop  
19      would be part of this area." But --

20                     MR. HARRINGTON: Just as a follow-up as  
21      kind of a comment on this. We did also have some evidence  
22      presented, I think it was from the U.S. Wildlife, that  
23      stated in there that this project going forward would  
24      prevent the biomass projects in the area from going

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1       forward. So, I think that sort of, I don't know where it  
2       fits in, but, like Mr. Northrop, I'm not sure which  
3       category, but this here appears to be the best one. And,  
4       I just wanted to say, at least in my opinion, I don't  
5       think that's an accurate statement that was made in that  
6       submission by them.

7 CHAIRMAN GETZ: Well, I guess I would  
8 suggest that we -- there are some issues that there's  
9 argument about where they should or shouldn't be best  
10 addressed, but let's consider it under here, because I  
11 think, arguably, you could say it's part of orderly  
12 development. So, then, I guess, you're still at the point  
13 of summarizing your issues. So, when we get to, as I take  
14 it, so when we get to considering whether the project will  
15 unduly interfere then, with the orderly development of the  
16 region, we will address that as one of the subset issues.

17 MR. NORTHRUP: Well, I'm actually pretty  
18 much done with that. The one last thing is that the  
19 Applicant has proposed two conditions of approval that we  
20 may want to consider as part of this area of the orderly  
21 development of the region. And, one condition of approval  
22 that the Applicant has proposed, it's in their closing  
23 brief, and it's in Appendix A, and it's Condition Number  
24 (c). And, that is the agreement between the Applicant and

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1 the Town of Dummer. I think there are four areas that the  
2 Applicant has agreed to as far as construction of the -- I  
3 don't have that right in front of me, but it's outdoor  
4 lighting and construction of the substation, there are a  
5 number of conditions in there. So, that may be one thing  
6 that we would want to consider that we include as a  
7 condition is that agreement with the Town of Dummer.

8 And, the second condition that the  
9 Applicant has proposed, relative to orderly development of  
10 the region, is also in their closing brief, Appendix A,  
11 and it's Condition Number (h), and I think it might be the

12 last condition. Condition Number (h), and that's the  
13 agreement between the Applicant and Coos County.

14 CHAIRMAN GETZ: Oh. And, that's the one  
15 regarding operation and decommissioning, which --

16 MR. NORTHROP: I don't know where that  
17 falls. So, that's another one that -- that had to do with  
18 Coos County. And, --

19 CHAIRMAN GETZ: I guess it's arguable  
20 that that could also come under "public health and  
21 safety".

22 MR. NORTHROP: Right. I don't know, so  
23 --

24 CHAIRMAN GETZ: Okay.

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1 MR. NORTHROP: Well, that concludes what  
2 I had to say. I don't know if you want to move on and get  
3 a consensus or where we go from here.

4 CHAIRMAN GETZ: Well, let's just have a  
5 discussion. Are there any issues that anyone wants to  
6 address with respect to orderly development of the region?

7 MR. HARRINGTON: I have a question. I  
8 just, you know, I wanted to know, just so I'm clear on it,  
9 where is the so-called "Agreement with Coos County", I  
10 don't know if it's called the "Decommissioning Plan", I  
11 guess it's now the "Agreement with Coos County". Where  
12 are we discussing that, under which suggestion, just so  
13 we're clear? Or, is it -- I guess it's the proposed  
14 agreement between the County of Coos and Granite Reliable  
15 Power.

16 DIR. SCOTT: That's in the -- the draft  
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17 in the Applicant's final -- I'm sorry.

18 CHAIRMAN GETZ: Yes, let's make sure we  
19 get one person at a time.

20 MR. IACOPI NO: Do you want the reference  
21 for that?

22 CHAIRMAN GETZ: Well, I think his  
23 question is "where are we going to discuss it?"

24 MR. IACOPI NO: Okay.

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1 CHAIRMAN GETZ: Are we going to discuss  
2 it here, under "orderly development", or the only other,  
3 the obvious place, it seems to me, because an awful lot of  
4 it has to do with decommissioning, is whether we should  
5 consider it part of "public health and safety". And, I  
6 guess I really don't have a preference.

7 MR. HARRINGTON: Well, I'd like to ask  
8 that you just pick one, Mr. Chair.

9 CHAIRMAN GETZ: Well, we haven't got  
10 much into the -- let me ask this to Director Normandeau,  
11 you were going to discuss the issues on "public health and  
12 safety". Were you planning to talk to that agreement and  
13 decommissioning as part of your discussion?

14 DIR. NORMANDEAU: I could, I guess. I  
15 hadn't really thought as decommissioning as part of the  
16 program. But, you know, I mean, you have the proposed  
17 agreement. I mean, from the health and safety aspect,  
18 it's like any agreement for providing services and a  
19 guarantee "we'll do this and that". I don't --

20 CHAIRMAN GETZ: Okay. Well,  
21 Mr. Harrington, then what your thought then, if we include

22 the agreement with the Coos County as part of the  
23 discussion here under "orderly development", you'd like to  
24 address the particulars of that?

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1 MR. HARRINGTON: Yes, but I --

2 CHAIRMAN GETZ: Well, let's do it then.

3 MR. HARRINGTON: Okay. Fine, you want  
4 to do it now. I thought it would go better in the other  
5 one, but I asked you to pick one, and you did. Do you  
6 want me to start now? Okay. I had a few concerns over  
7 this, and I won't get into the specific concerns, as well  
8 as more general ones. I think one of the more general  
9 ones was, and this kind of gets back into the financing a  
10 little bit, as well as the decommissioning part of this.  
11 And, in here, I believe it's -- the decommissioning still  
12 talks about "funding will be fully established within the  
13 first ten years following completion of construction".  
14 And, my concerns, as I brought up during the hearings,  
15 were, one, if something were to happen during the actual  
16 construction process, that there would have to be some  
17 contingency on something that would be able to address, if  
18 they get halfway through, three-quarters of the way  
19 through building it, and for some reason they don't  
20 finish. Maybe the bank that finances them turns out to be  
21 another Lehman Brothers, or whatever, I don't know. But  
22 the project is halfway built, and the financing dries up,  
23 or they discover some new animal or whatever, some  
24 environmental impact, and the project gets shut down. So,

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1 there needs to be some way of maybe a bond or insurance,  
2 I'm not a financial guy, so I don't know, but there's got  
3 to be some method of doing that.

4 And, similarly, once the project gets  
5 going, waiting for ten years, there's a lot of discussion  
6 on the effects of wildlife and avian life here, and a lot  
7 of people have discussed the need to do follow-up studies  
8 and so forth. Well, if we were to decide that those were  
9 reasonable, if you're going to do follow-up studies,  
10 you're going to have to deal with the results. And, the  
11 results could be two or three years down the road after  
12 operation that something very adverse and unexpected is  
13 determined, and it's decided that this windpark needs to  
14 be shut down. So, they would need to have the resources  
15 of somehow, again, maybe it's an insurance policy, maybe  
16 it's a bond, but some way that they could address  
17 decommissioning prior to the -- everything goes well, and  
18 in lieu if everything goes well, and, you know, at the end  
19 of ten years they have adequate funding for it. I think  
20 there has to be something to cover that period before they  
21 get adequate funding from -- through the construction  
22 period and through the first ten years of operation.  
23 That's my general concern on this agreement.

24 CHAIRMAN GETZ: Any other discussion  
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1 about that issue or other issues related to "orderly  
2 development"? Mr. Northrop.

3 MR. NORTHROP: I'm looking for that. I  
4 thought there was something, it's either in the

5 Applicant's brief, closing, that there was discussion of  
6 that, of funding the decommissioning plan in year one, and  
7 maybe that was someone's condition of approval, where  
8 10 percent of the decommissioning plan is funded in year  
9 one and 20 percent in year two, where am I -- where am I  
10 finding that?

11 MR. HARRINGTON: Mr. Northrop, I'm not  
12 sure exactly where that is. But my concern would be that,  
13 even if you had a provision where you got 10 percent in  
14 year one and 20 percent in year two and 30 percent year  
15 three, I guess would get you somewhere in year five or  
16 four and a half it would be all fully funded. What would  
17 happen if the project were either shut down during  
18 construction or after year one, when you were  
19 substantially short of that? And, that's what I'm saying.  
20 If some alternative to the long term decommissioning  
21 funding, and maybe it's an insurance policy, maybe it's a  
22 bond, again, I'm not a financial guy, but that's why I'd  
23 like to see something in place to cover that, so we don't  
24 get stuck with a whole mess of dug-up territory up there,  
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1 and then the Company just doesn't have any money to take  
2 care of it.

3 CHAIRMAN GETZ: Director Normandeau.

4 DIR. NORMANDEAU: So, that would be  
5 something we'd discuss further as we get into the  
6 conditions or are we discussing how we do that now?

7 CHAIRMAN GETZ: Yes, I think we need to  
8 kind of stick with the approach we've been taking. Is  
9 let's look at the statute, let's determine, as a general

10 matter, whether we think the Applicant has or hasn't met  
11 its burden, and the motions so far have been subject to  
12 conditions. Because I think we're going to have to come  
13 back at the end and make sure that we've got all the  
14 conditions that we intend to impose, again, assuming that  
15 this project is to go forward and we were to approve it.  
16 But, when we get to that point, let's start looking at the  
17 conditions and the language, but I would suggest we do  
18 that, you know, at the end, altogether, in terms of  
19 specifics. Mr. Scott.

20 DIR. SCOTT: Despite what you just said,  
21 --

22 CHAIRMAN GETZ: Yes.

23 DIR. SCOTT: -- I just want to point out  
24 that, in the Applicant's post testimony, there's a draft  
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1 agreement between the Applicant and Coos County, which  
2 talks about decommissioning. I just wanted to throw out,  
3 it's probably obvious, I assume one of the decisions we  
4 need to make is is that the appropriate venue or is it  
5 really appropriate to be in the certificate, if there is  
6 one, from the SEC, or is it appropriate, I think -- I'm  
7 assuming, based on that draft being in the Applicant's  
8 post filing, that their intention would be to do an  
9 agreement with the Coos County Commissioners to talk about  
10 commi ssi oni ng [decommi ssi oni ng?]. So, I just wanted to  
11 throw that out.

12 CHAIRMAN GETZ: Which is my recollection  
13 is, is kind of the model that was used in Lempster.

14 DIR. SCOTT: Right. But is that

15 appropriate, is my question?

16 CHAIRMAN GETZ: And, I think that's a,  
17 you know, I think it's entirely subject to our discretion,  
18 whether we think that's appropriate for them to do that as  
19 something separate from the certificate and conditions or  
20 we want to make it a condition of our own. But I don't  
21 think we need to make that decision before we discuss the  
22 general notion of "orderly development of the region", but  
23 that was something we could come back to as to how we play  
24 that out.

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1 MR. IACOPI NO: Mr. Chairman, there just  
2 may -- one more issue on the decommissioning. There may  
3 be some confusion. There is a -- There are two different  
4 agreements with the Coos County Commissioners in the  
5 record. One is contained in Volume 6 of the Application,  
6 when they filed their supplements, and then there's the  
7 proposed agreement that is attached to their brief, which  
8 is somewhat different. I assume the last -- I assume that  
9 the agreement that is attached to the brief was the one  
10 that the Applicant is proposing as its requested  
11 requirement or condition. But they are somewhat  
12 different. And, I don't know if that's causing some of  
13 the confusion about it. I just want to point that out.

14 MR. HARRINGTON: And, may I say for  
15 Mr. Iacopino, I was reading from the one that was attached  
16 to the brief.

17 MR. IACOPI NO: The brief, okay.

18 CHAIRMAN GETZ: Mr. Northrop.

19 MR. NORTHROP: And, then, I would just,

20 so we can kind of keep it in the record, that condition,  
21 that attachment in the Applicant's final brief, that is  
22 what I was looking for, that contains that payment in year  
23 one; the 10 percent in year two, another 10 percent in  
24 year three, that scale -- that's what I was looking for in  
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1 there.

2 MR. IACOPI NO: It's a level 10 percent  
3 payment over the ten years.

4 MR. NORTHROP: Right.

5 MR. HARRINGTON: It's the very last  
6 paragraph of the agreement.

7 MR. NORTHROP: Right.

8 CHAIRMAN GETZ: Mr. Scott.

9 DIR. SCOTT: Again, I apologize for  
10 displeasuring the Chair. Based on my previous statement,  
11 as I read the attachment now, which is the post filing, it  
12 does say "Whereas the County and GRP desire that the New  
13 Hampshire Site Evaluation Committee adopt these provisions  
14 and conditions and incorporate them into any certificate"  
15 that we may grant to the project. So, now that I see  
16 that, I see that the Applicant is suggesting that,  
17 whatever agreement terms are in there, it appears that  
18 they want those in the certificate also.

19 CHAIRMAN GETZ: Okay. And, I see that's  
20 the fourth "whereas" clause in the first page of the  
21 agreement attached to the brief? Okay. Thank you. Okay.  
22 Any further issues? Dr. Kent.

23 DR. KENT: A few salient points. It's  
24 disappointing we didn't get a chance to examine Professor

1 Ross Gittel's study. That would have been helpful in our  
2 deliberations. I've heard no credible evidence offered  
3 during the course of these hearings that tourism or real  
4 estate values will be impacted. And, it appears that,  
5 through efforts of the landowners and outreach efforts by  
6 Mr. Decker of the Applicant, that recreational activities  
7 will be continued to be supported in the area, with the  
8 exception of a danger zone around the equipment.

9 CHAIRMAN GETZ: Well, let me just say  
10 something about the issue Mr. Northrop raised about the  
11 system impact analysis and how that fits in here. And, I  
12 think, and I don't recall if it was Mr. Northrop or  
13 Mr. Harrington, someone cited to Counsel for the Public's  
14 brief, and indicating that a condition -- that there  
15 should be a condition that a complete system impact  
16 analysis and an unambiguous green light from ISO-New  
17 England should be made a condition, which I certainly  
18 would have no objection to that. But, I think, at least  
19 my understanding of the testimony, in how this works, is  
20 that, unless the ISO said they were, you know, they would  
21 have to give that approval as a precondition to any  
22 activity that would be taken up there to interconnect,  
23 interconnect the line or interconnect the project to the  
24 transmission system. So, in that regard, then I think

1 there's kind of like a built-in orderliness to the issues  
2 and to the development of the region. That, with respect  
3 to whether the ISO would permit the interconnection of a

4 large generation facility that it didn't think could be  
5 reliably interconnected with the system, because that's  
6 their job.

7 So, are there any other issues with  
8 respect to "orderly development"?

9 (No verbal response)

10 CHAIRMAN GETZ: Then, I guess I would  
11 ask for a sense of the Committee, whether, subject to any  
12 appropriate conditions, whether the members -- any members  
13 who think that the Applicant has demonstrated that it  
14 would not, by a preponderance of the evidence, that it  
15 would not unduly interfere with the orderly development of  
16 the region, with due consideration to the views of local,  
17 municipal and regional planning commissions, please raise  
18 your hand if you agree that that is the case?

19 [Show of hands]

20 CHAIRMAN GETZ: Well, it looks like  
21 everyone agrees that the sense of the Committee is that  
22 that's the case. So, I would make a motion that we find  
23 that, subject to any appropriate conditions, that the  
24 Applicant has demonstrated that the project would not

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1 unduly interfere with the orderly development of the  
2 region.

3 MR. HARRINGTON: I'll second that  
4 motion.

5 CHAIRMAN GETZ: All those -- Any  
6 discussion?

7 (No verbal response)

8 CHAIRMAN GETZ: All those in favor,  
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9 please signify their support by saying "aye"?  
10 (Multiple members indicating "aye".)  
11 CHAIRMAN GETZ: Any opposed?  
12 (No verbal response)  
13 CHAIRMAN GETZ: Note for the record  
14 there are none opposed. So, the motion carries.  
15 All right. The next issue then, we'd be  
16 returning to Mr. Northrop, the question is, "Has the  
17 Applicant demonstrated that the project will not have an  
18 unreasonable adverse effect on aesthetics?" So, I guess,  
19 Mr. Northrop, if you want to take a recess --  
20 MR. NORTHROP: No, I'm flipping, trying  
21 to find where that is. Aesthetics. In my mind, this  
22 revolves around what the turbines look like, and,  
23 essentially, their visual impact. And, a visual impact  
24 or, excuse me, a Visual Assessment Report was submitted by  
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1 the Applicant, with photos of the site, including visual  
2 simulations. The report concludes that the project would  
3 not result in unreasonably adverse visual impacts. Also  
4 included with the Applicant -- or, with the Application,  
5 or, excuse me, I should say in prefiled testimony of  
6 Matthew Borkowski supports a finding that there will not  
7 be any adverse impact on local property values due to  
8 shadow flicker from the turbines, due to the distance from  
9 the turbines to residential locations.  
10 The project will be visible from various  
11 locations in the region. And, Public Counsel had  
12 recommended that the Applicant construct a visitor center  
13 in Errol and information kiosks at at least three

14 locations on Route 26 or Route 16. And, also, that the  
15 Applicant provide interpretive guided tours of the  
16 project for visitors, students, and officials.

17 Also, the closest resident, at least as  
18 far as I can tell, the closest resident to the project is  
19 Rick Tillotson. And, in my notes from the -- from the  
20 public hearing in Lancaster, he had stated he was  
21 "strongly in favor of the project". And, there was also a  
22 letter from a Mr. Nelson, I believe, and I think the  
23 letter was dated April 7th, 2009, voicing his disapproval  
24 of the project. And, I actually -- that's another one I

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1 don't have, and I don't know why I don't have it. I just  
2 -- I think it was Nelson, and --

3 MR. IACOPI NO: Many of these letters  
4 were distributed to you all by e-mail as an attachment, so  
5 they may be --

6 MR. NORTHROP: Right.

7 MR. IACOPI NO: -- in your e-mail  
8 accounts, if you save your e-mails.

9 MR. NORTHROP: Right. I don't have any  
10 more. That's the --

11 CHAIRMAN GETZ: Okay. Any discussion  
12 about aesthetics? Mr. Harrington.

13 MR. HARRINGTON: Yes. My only comment  
14 on this would be, we have looked at other wind projects in  
15 the past, i.e. the Lempster Project, where the location of  
16 the windmills, their proximity to residential housing and  
17 other, close to roads and so forth, was a consideration.  
18 I guess there's been a lot of arguments here that "this is

19 a remote location and is more pristine and shouldn't be  
20 disturbed", but you also reverse that argument to say,  
21 because it's such a remote location, it's probably about  
22 as far away from people as you could get in New Hampshire  
23 and put up any substantial wind projects, and without, you  
24 know, going way off the coast.

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1 CHAIRMAN GETZ: Other issues about  
2 aesthetics? Dr. Kent.

3 DR. KENT: I would add that no credible  
4 evidence was presented that this project will have an  
5 aesthetic impact.

6 CHAIRMAN GETZ: Let me ask this question  
7 to make sure, Mr. Northrop, and I guess it's my  
8 recollection, but did you say that, in terms of turbines  
9 that would be seen from the highway, that those are  
10 primary on Dixville Peak, is that the ones that would be  
11 seen from the Tillotson property? Is that what you were  
12 saying?

13 MR. NORTHRUP: He is the closest, I'd  
14 have to look, and I didn't look at the transcript and his  
15 testimony, but, in my notes, he had said that he was the  
16 closest resident to the property. And, I don't remember  
17 if he actually can see the turbines from his property or  
18 not.

19 CHAIRMAN GETZ: Because there's one set,  
20 and this issue comes up -- well, let me step back. I  
21 think, in terms of what are our options as a Committee, we  
22 could approve the project in its entirety, we could deny  
23 the project, we could approve the project with conditions,

24 or we could approve essentially portions of the project.

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1 And, this issue comes up, I think, in a number of ways,  
2 and there was also testimony about what would happen if,  
3 you know, one or more turbines were not part of the  
4 project, and what was the material effect, and what effect  
5 that would have on the ISO study?

6 But, whether it's here, under  
7 "aesthetics", or comes under the heading of "natural  
8 environment" or comes under the heading of "available  
9 alternatives", I think it's important at some point in our  
10 discussions that we take a look at this issue. If I go to  
11 the map, it's Figure 3 in the Application. And, if you  
12 look at the -- see if folks want to grab that, that  
13 follows Page 102 in the Application. And, if you look at  
14 that, in the beginning, coming from the south, going  
15 north, from the Town of Dummer, and you have the  
16 "substation maintenance building, lay-down yard, and you  
17 essentially have four strings of turbines. So called  
18 "Fishbrook" is the first string, and then there's the  
19 second and third strings are really off the same access  
20 road, Owlhead and Mount Kelsey, and the fourth string, to  
21 the furthest north, off a separate access road, being  
22 Dixville Peak. And, I think we should have a discussion,  
23 again, not perhaps now, but later, as we go through these  
24 issues, on whether or not that fourth string on Dixville

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1 Peak should be part of this project. And, I think it

2 comes up in the first instance for aesthetics, but I think  
3 a very small part of that. So, I wouldn't suggest that we  
4 make a decision on aesthetics necessarily based on that,  
5 though we could defer a final discussion of aesthetics,  
6 and maybe address this larger issue under the headings of  
7 "aesthetics" and perhaps "available alternatives".

8 So, if anybody has any thoughts about  
9 that? Mr. Scott.

10 DIR. SCOTT: I had a thought about an  
11 earlier statement, so I will hold it until you get any  
12 more thoughts on this issue.

13 CHAIRMAN GETZ: Okay. Are there any  
14 thoughts on that? Dr. Kent.

15 DR. KENT: If I understood your  
16 question, you're bringing up the issue of whether we  
17 should parse out Dixville, and if that's --

18 CHAIRMAN GETZ: Well, my proposal is  
19 that we discuss that.

20 DR. KENT: I would suggest that we  
21 discuss that under "available alternatives".

22 CHAIRMAN GETZ: Okay.

23 MR. HARRINGTON: Yes, that's a good  
24 place for it.

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1 CHAIRMAN GETZ: Okay. I'm looking  
2 around, it seems the sense of the Committee that that be a  
3 part of the discussion of "available alternatives". Mr.  
4 Scott.

5 DIR. SCOTT: Back to the subject of most  
6 impacted by visibility issues, I want to, if you look on

7 Page 5 of Jean Vissering's original testimony, according  
8 to her study, it shows the camp owners of Millsfield Pond,  
9 which are approximately 2.2 miles away, if I understood  
10 from her testimony, that's the most impact, just going  
11 back to the earlier statement.

12 CHAIRMAN GETZ: Okay. Director  
13 Normandeau.

14 DIR. NORMANDEAU: I was going to go  
15 along with that. Now, I just wanted to -- I'm trying to  
16 recall whether those were privately owned or whether those  
17 were lease holdings in the property?

18 CHAIRMAN GETZ: I don't recall the  
19 answer to that off the top of my head.

20 DIR. NORMANDEAU: I don't recall either.  
21 There was, you know, information about the turbines as  
22 seen from Umbagog. But, at the 13 or 14 miles, it seemed  
23 to me that at that point they were nothing more than dots  
24 on a horizon. And, the reason I bring up the Millsfield

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1 Pond issue, because that was something there. But, if, in  
2 fact, that is, you know, subject properties of ownership,  
3 it kind of puts a bit of a different light on things.

4 MR. IACOPI NO: I'm looking for it. I  
5 think the Millsfield Pond cabins were leased from the  
6 paper interests to the individuals.

7 DIR. NORMANDEAU: That's what I thought.

8 MR. IACOPI NO: I'm trying to find the  
9 exact reference to that.

10 DIR. SCOTT: It's on Page 5, again, at  
11 the very bottom, she references "The pond, however, is on

12 private timber land and is not identified as a highly  
13 valued recreational resource". So, that implies its  
14 leased from the timber operations.

15 MR. HARRINGTON: Just to do one  
16 follow-up to Director Normandeau's comment there about  
17 Lake Umbagog. If I remember correctly, we had a copy of a  
18 picture that was probably, I don't know, it was a fairly  
19 small size picture, it was on a page eight and a half by  
20 eleven or something. And, I asked, because it was  
21 supposed to be a simulation of where the wind towers would  
22 be, and I couldn't see any on there, and, in fact, you  
23 couldn't see it on that picture, and they had to bring  
24 around, whatever size it was, 2-foot by 3-foot picture,  
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1 and then, if I look real close, you could see this very  
2 small thing on the horizon. So, clearly, from Lake  
3 Umbagog, you have to really struggle, and that was on a  
4 very clear day, and having spent a lot of time there,  
5 that's kind of rare, but you have to really struggle to  
6 see these at all from the State Park area there.

7 CHAIRMAN GETZ: And, do you have 20/20  
8 vision, Mr. Harrington?

9 MR. HARRINGTON: Yes, I actually do.  
10 With my contacts.

11 CHAIRMAN GETZ: Well, with respect to  
12 aesthetics then, I guess let me ask the sense of the  
13 Committee. And, I'll note the language, again, another  
14 statute written with a double negative: That we must find  
15 that "the site will not have an unreasonable adverse  
16 effect on aesthetics." Actually, that might be a triple

17 negative, but -- I'll just ask a sense of the Committee,  
18 whether -- if you think that the Applicant has  
19 demonstrated that the project will not have an  
20 unreasonable adverse effect on aesthetics, if you just  
21 raise your hand?

22 [Show of hands]

23 CHAIRMAN GETZ: Okay. Well, looks like  
24 we're unanimous in that respect. So, I would make a  
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1 motion that we find that the project will not have an  
2 unreasonable adverse effect on aesthetics, subject to any  
3 appropriate conditions that we might impose.

4 MR. HARRINGTON: I'll second that.

5 CHAIRMAN GETZ: We have a second. Any  
6 discussion?

7 (No verbal response)

8 CHAIRMAN GETZ: Hearing no discussion,  
9 then all those in favor of the motion, signify their  
10 support by saying "aye"?

11 (Multiple members indicating "aye".)

12 CHAIRMAN GETZ: Any opposed?

13 (No verbal response)

14 CHAIRMAN GETZ: None opposed. So, the  
15 motion passes. And, well, Mr. Northrop, are you prepared  
16 to do "historic sites" as well?

17 MR. NORTHROP: Yes.

18 CHAIRMAN GETZ: And, then we'll take a  
19 recess after that.

20 MR. NORTHROP: The last section, "will  
21 not have an unreasonable adverse effect on historic

22 sites", the project will not physically alter any existing  
23 buildings or structures, but there could be visual impacts  
24 to historically significant sites or structures. A 3-mile  
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1 radius was established around the project and established  
2 as the area of potential effect. Historic properties were  
3 identified by the Louis Berger Group, by Dr. Hope Luhman,  
4 and were surveyed. The results are in Appendix 12a. And,  
5 based on the work to that point, the conclusion was that  
6 "the project is unlikely to have any unreasonable adverse  
7 effect on any known resources."

8 Also, a Phase IA archeological  
9 investigation was conducted, and no archeological  
10 resources or sites were identified within the area of  
11 potential effect. But areas were identified as being  
12 archeologically sensitive, and a Phase IB Archeological  
13 Survey was recommended.

14 In the prefiled testimony of Hope --  
15 Dr. Hope Luhman, she stated that she does not believe the  
16 project will have an unreasonably adverse impact on  
17 historic sites. And, also, in the supplemental prefiled  
18 testimony of Dr. Luhman, based on the findings of the  
19 Phase IB Archeological Survey, no further work was  
20 warranted for the project, and also that the New Hampshire  
21 Division of Historical Resources concurred with that  
22 conclusion.

23 And, in the Applicant's final brief,  
24 based on -- based on uncontroverted expert testimony, the  
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1 Subcommittee can conclude that the project will have no  
2 unreasonable effects on historic sites. That's all.

3 CHAIRMAN GETZ: Any discussion about the  
4 issue of historic sites? It doesn't seem that there was  
5 much attention to it in terms -- in the briefs as well, so  
6 --

7 (No verbal response)

8 CHAIRMAN GETZ: Hearing no discussion, I  
9 guess I'll take the sense of the Committee. I guess, all  
10 those who think that the Applicant has shown that there  
11 will not be an unreasonable adverse effect on historic  
12 sites, indicate that they agree with that conclusion by  
13 raising their hands?

14 [Show of hands]

15 CHAIRMAN GETZ: And, it looks like  
16 everyone agrees with that conclusion. So, I would make a  
17 motion that we find, subject to any appropriate  
18 conditions, that the Applicant has demonstrated that the  
19 project will not have an unreasonable adverse effect on  
20 historic sites.

21 DIR. SCOTT: I'll second it.

22 CHAIRMAN GETZ: Seconded by Mr. Scott.  
23 Any discussion?

24 (No verbal response)

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1 CHAIRMAN GETZ: Hearing no discussion,  
2 all those in favor of the motion indicate their support by  
3 saying "aye"?

4 (Multiple members indicating "aye".)

5 CHAIRMAN GETZ: Opposed?

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6 (No verbal response)

7 CHAIRMAN GETZ: None opposed. I'll note  
8 that the motion carries unanimously.

9 So, with that, we will take I'd say a  
10 15, 20 minute recess.

11 (Whereupon a recess was taken at 2:51  
12 p.m. and the deliberations resumed at  
13 3:26 p.m.)

14 CHAIRMAN GETZ: Okay. We're back on the  
15 record in Site Evaluation Committee Docket 2008-04. And,  
16 the next order of business is whether the project would  
17 have an unreasonable adverse effect on air and water  
18 quality.

19 Before we turn to Mr. Scott, let me just  
20 say that my expectation is we will end the public meeting  
21 today sometime between 4:30 and 5:00. Our intention is to  
22 resume on Monday, at 10:00. And, I guess we'll just see  
23 how far we get with Mr. Scott's discussion. Depending on  
24 how long or short that is, if we have some time left, I

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1 would defer going to a discussion of "natural  
2 environment", because I expect that that is going to be a  
3 lengthy discussion even for describing the issues. So, if  
4 there's time available today, the next issue we would take  
5 up would be "state energy policy". So, that's how we plan  
6 to conclude the meeting today.

7 So, I'll turn to Mr. Scott.

8 DIR. SCOTT: Okay. I'll start with I  
9 hope to be the easier one, air quality. With the Air  
10 Resources Division with the Department of Environmental

11 Services, there are no air permits required for this  
12 project. There has been testimony somewhat in the filings  
13 regarding potential positive air impacts, to the extent  
14 that the energy produced here would displace fossil fuel  
15 burning and other polluting sources. So, I'm not going to  
16 belabor that. But I would submit that air quality is not  
17 negatively impaired by this project. I don't know if the  
18 Chair would like to start with that?

19 CHAIRMAN GETZ: Well, why don't we just  
20 ask, are there any questions/discussion with respect to  
21 that issue?

22 (No verbal response)

23 CHAIRMAN GETZ: Okay. Hearing nothing,  
24 then the way it's set out in the statute, it's a compound  
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1 subissue, "air and water quality". So, why don't we just  
2 move on to a discussion of water quality then.

3 DIR. SCOTT: On water quality, certainly  
4 there are impacts. I'll start by directing the Committee  
5 to the 10 February 2009 submission by the Department of  
6 Environmental Services, signed by Randy Pelletier, which  
7 includes a proposed 401 Water Quality Certificate, a  
8 Wetlands Permit, and an Alteration of Terrain Permit. So,  
9 again, a Wetlands Permit has been issued and an Alteration  
10 of Terrain Permit has been issued by the Department of  
11 Environmental Services. What we have before us is a  
12 proposed 401 Water Quality Certificate. My understanding,  
13 from talking to Director Stewart, Harry Stewart, with the  
14 Department of Environmental Services' Water Division, they  
15 would anticipate being prepared to issue a final 401

16 Certificate within a week or so.

17 Also, I'd like to direct the Committee's  
18 attention to -- there's three what's called "status  
19 reports" from November 12th of 2008, again, from the  
20 Department of Environmental Services. And, I've lost my  
21 copy here, so it's here someplace. I'll do this by memory  
22 then. Of germane of those status reports are comments  
23 from the Department of Environmental Services regarding  
24 the proposal at the time, and requiring more information.

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1 I'll talk about it a little bit more in the future. For  
2 instance, there had been some discussion over siting of  
3 the project, as far as the roads and pads for the wind  
4 towers themselves. In that correspondence, it talks about  
5 asking for further definition and moving some of those to  
6 mitigate and reduce the wetlands impact.

7 I'd also like to draw the attention of  
8 the Committee. We had testimony from Raymond Lobdell and  
9 Philip Beaulieu, I believe is how you produce it, from  
10 Horizons Engineering. Also of great significance to the  
11 wetlands issue is the Mitigation Agreement between  
12 Application Mountain Club, Fish & Game, and the Applicant.  
13 In that, that document, there is 620 acres of land set  
14 aside for wetlands mitigation for impacts of the project.  
15 Also, germane to discussion here, we have comments from  
16 Appalachian Mountain Club, Industrial Wind Action Group,  
17 with Lisa Linowes, and Public Counsel, on both conditions,  
18 proposed conditions and comments on the Department of  
19 Environmental Services' permits and proposed conditions  
20 also.

21 I can summarize some of the major  
22 issues. Beyond and including that covered by the  
23 Department of Environmental Services permits and proposed  
24 permits, certainly, as everybody has heard testimony, the  
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1 high altitude environment is a concern, vernal pools is a  
2 concern, and certainly run-off has been a stated concern,  
3 and as far as revegetation, and how do you mitigate those.

4 A couple issues that were brought up,  
5 and maybe we can discuss when we get to conditions,  
6 assuming we agree to that. I think there's general  
7 agreement, I believe, that the Applicant would use what's  
8 called a "sandwich technique" for road crossings, where  
9 there are presence of wetlands. I believe that to be the  
10 case. There's been correspondence from AMC and Public  
11 Counsel asking for that. I believe the Applicant has  
12 also, in their amendments to their proposals with DES,  
13 have also included that.

14 Also, excuse me while I thumb through  
15 pages here, as I mentioned earlier, there are some  
16 concerns regarding the impacts, to make sure the project  
17 has, to the extent possible, limited wetlands, as far as  
18 the location of the roads and the pads. I mentioned that  
19 already, I believe.

20 Also, there are some requests also from  
21 AMC and others regarding the selection and requirement to  
22 have a third party monitor, environmental monitor for the  
23 site. The Applicant -- excuse me, some of the requests  
24 have been that that person be directly hired by and

1 controlled by the Department of Environmental Services,  
2 rather than just report to the Department of Environmental  
3 Services.

4 So, that is intended as a summary. I  
5 don't know if you would like more, I could certainly do  
6 that.

7 CHAIRMAN GETZ: Well, let's see if  
8 there's any discussion of these issues first or any  
9 thoughts, concerns, comments about anything of these  
10 issues? Director Normandeau.

11 DIR. NORMANDEAU: Just a question.  
12 What's the kind of dividing line, if there even is one,  
13 between "water quality" and "natural environment"? You  
14 know, is "water quality" simply, you know, run-off and  
15 surface waters or does that go right into the whole  
16 wetlands environment scenario? Is there some sort of a  
17 line there for this discussion?

18 CHAIRMAN GETZ: I don't think there's a  
19 clear-cut one. For our discussions, I think, you know, in  
20 terms of water quality versus natural environment, I guess  
21 I would propose that we - that, under "natural  
22 environment", we talk about mostly the wildlife issues,  
23 you know, the avian species, raptors, bats, birds, plant  
24 issues, and that we talk here about the road issues, the

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1 road construction issues and relate that, because I think  
2 that has the clearest link to the Alteration of Terrain  
3 Permits, etcetera.

4 DIR. SCOTT: Right. If I could, I think  
5 the closest nexus would be the vernal pool issue, because  
6 there's, obviously, the vernal pools, then you're looking  
7 at what kind of wildlife that supports. And, one other  
8 area was brought to the Committee's attention was the  
9 issue of a federal, and I say "federal", because there is  
10 no state jurisdiction here, 404 Certificate. We have also  
11 received letters from -- copies of letters to the Army  
12 Corps of Engineers from both U.S. EPA and from --

13 MR. IACOPINO: Fish & wildlife.

14 DIR. SCOTT: Thank you. U.S. Fish &  
15 Wildlife, talking about that 401 process, and whether  
16 there should be an Environmental Impact Study or an  
17 Environmental Assessment done also. But I would argue, in  
18 my opinion, it appears to me that that's outside the scope  
19 of the Site Evaluation Committee. That's a federal level  
20 issue that's going to happen independently of us.

21 CHAIRMAN GETZ: Any other? Mr. Janelle.

22 MR. JANELLE: Regarding the monitor, as  
23 part of the DES permitting requirements, is there a  
24 requirement for a monitor?

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1 DIR. SCOTT: Yes. I think the -- my  
2 understanding is the issue is, and, again, I have so much  
3 paper, I'm a little bit flustered, so I don't have the  
4 exact thing in front of me. But I believe the issue at  
5 hand is that DES would require a monitor, a third party  
6 monitor to be hired by the Applicant and provide reports  
7 to DES. I believe, what I understand what has been asked  
8 is, instead of that person being hired and providing just

9 reports to DES, I believe they're asking that they be  
10 controlled by DES, independently to DES. That's not  
11 typically done. My understanding is, in the -- before my  
12 time, there was a pipeline case, I'm trying to remember  
13 the name of the pipeline, the Portland Natural Gas  
14 Transmission Pipeline, that was done in that case. The  
15 issue, to frame it, and, again, we may be going into  
16 conditions, I don't know if the Chair wants to do that,  
17 would be that's outside the norm, it's been done in that  
18 case. But what it would require from the department, as a  
19 State agency, I'm sure you understand, we would have to go  
20 out for -- solicit people to do that, award a contract, go  
21 to G&C, pay them. There's a lot involved in that, and  
22 obviously manage it also. So, the question would be, "is  
23 that necessary?" In my opinion, that would be a question  
24 for the Committee.

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1 CHAIRMAN GETZ: Okay. Any other  
2 thoughts? Dr. Kent.

3 DR. KENT: We had the good fortunate, on  
4 the water quality issue, of having DES involved in the  
5 conduct of a thorough examination of the proposed  
6 activities of the Applicant. And, the Applicant has  
7 worked with DES. They have come to agreement. And, we  
8 can again look to DES to help us with any conditions, if  
9 we go that direction.

10 CHAIRMAN GETZ: Okay. Thank you. Other  
11 thoughts?

12 MR. HARRINGTON: Yes. Just as a  
13 follow-up to that. I believe one of the conditions

14 proposed by the Applicant was to have a -- "The Applicant  
15 shall hire", Condition G, "an independent  
16 engineer/environmental monitor to monitor the  
17 construction". "This monitor shall have full authority to  
18 immediately stop work". So, I think, you know, to me,  
19 that kind of covers that fairly well. That they're going  
20 to be not reporting to the construction firm, but I guess  
21 they're going to be hired by the Applicant. So -- And,  
22 they would have "stop work" authority onsite, which means  
23 they could immediately bring something, if it was going  
24 wrong, to stop. And, I think, from the point of view of

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1 the Applicant, they would, I mean, just would be common  
2 sense to me that they would want to make sure that the  
3 permits were complied with. Because, if they weren't,  
4 they would, long term, probably not get their project  
5 built. So, I think that's the same thing.

6 And, the other thing, with the water  
7 quality, we want to remember that this is a area that has  
8 been, and if this project is not approved, will continue  
9 to be logged fairly heavily, even in the high altitude  
10 areas. And, you know, as we all saw during that site  
11 visit, that logging means you're cutting down a lot of  
12 trees, not only, but you're also building roads, and a lot  
13 of these vernal pools were talked about, we had testimony  
14 that said they were actually created we skidders. So,  
15 there's a lot of -- this isn't a pristine wilderness  
16 that's sitting there, you know, like a designated  
17 wilderness area, where no mechanical equipment is allowed  
18 or whatever. The option that we have to hold this against

19 is, there will be large trucks going through there, there  
20 will be widespread cutting down of the forest. There will  
21 be skidders, there will be chainsaws, and all the  
22 prerequisite that come with that. There will be some oil  
23 being spilt and gas being spilt and etcetera. So, I think  
24 we can't look at this as the option is "it will just sit

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1 there and no one will touch anything for the next 50  
2 years. So, I think that's an important consideration to  
3 balance.

4 CHAIRMAN GETZ: Mr. Scott.

5 DIR. SCOTT: And, again, I don't know,  
6 again, these some to be going down the road of looking at  
7 conditions. But, again, on the monitor, I believe that  
8 you're talking somebody that is either certified or a  
9 professional engineer. So, I would argue on the case of  
10 perhaps this wouldn't be necessary, to have it be under  
11 DES. It would be, obviously, if you're a professional  
12 engineer, you're certified, whether you call it "code of  
13 ethics or wanting to be re-employed someplace else again,  
14 the Department of Environmental Services will be  
15 over-the-shoulder inspecting as a normal course of  
16 business. So, again, I'm not -- I don't, personally, I'm  
17 not sure I see where it has to be controlled by the  
18 Department in order for it to be appropriate as a third  
19 party.

20 CHAIRMAN GETZ: Director Normandeau.

21 DIR. NORMANDEAU: I don't know if this  
22 is the right juncture, if you will, to just make a comment  
23 on what Mike had mentioned earlier relative to logging.

24 That much of the information we have seen, letters,  
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1 etcetera, presents the site, the area as a "pristine  
2 wilderness", so to speak. And, yet, my observations, when  
3 there, is it is one of the most heavily cut-over pieces of  
4 land that I've ever seen. In fact, to the point where  
5 huge areas of it seem to me to have been cut to dirt.  
6 And, I just kind of want to, now that we're in this  
7 environmental area a little bit, I just want to sort of  
8 put that in perspective with much of the volume of  
9 language we get in these letters that have been sent to us  
10 and e-mails about "impact to pristine conditions", that  
11 some of them make me wonder if they actually had ever seen  
12 the area up there. So, just for the sake of conversation.

13 CHAIRMAN GETZ: Mr. Scott.

14 DIR. SCOTT: I did want to add three  
15 more items that I forgot in my discussion. One, it had --  
16 concerns were raised also and comments regarding,  
17 particularly in light of, I believe, the Altona, New York  
18 incident. What happens if one of these units were to  
19 leak? So, I want to point out that, in the 401 -- the  
20 proposed 401 Certificate, Condition E-10, talks about  
21 what's called a "Spill Prevention Control Countermeasure  
22 Plan" that would be required. That would be intended to  
23 address that type of incident.

24 Also, we received comments of concern  
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1 about, frankly, salt or the amount of chloride used for  
2 the roads, that type of thing, the impacts of that.

3 There's also a condition -- conditions, in this case, E-14  
4 of the Proposed Water Quality Certificate, 401  
5 Certificate, that address the amount of that, requires  
6 reporting and monitoring of how much is used and reporting  
7 to DES.

8 Also, there has been raised concerns,  
9 especially given the above 2,700 feet elevation conditions  
10 at some of the sites, regarding, again, erosion control,  
11 and there were concerns raised on -- certainly, there is  
12 conditions, requirements after a flood event or a storm  
13 event. There has to be inspections, but regarding how  
14 often the inspections are made. So, I would point out  
15 that that may be something you want to talk about more, a  
16 little bit more, and it may make sense, in this case,  
17 given that it's high altitude, more sensitive, that there  
18 would be more of a requirement than perhaps normal for  
19 more frequent inspections for erosion control and allowing  
20 that to happen. So, if the area has started to erode  
21 already prior to a flood event, and then you have a flood  
22 event, clearly, there will be more of an impact. So, that  
23 would be, when we get to conditions, perhaps something we  
24 could discuss some more. And, that would be in response

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1 to some comments we received.

2 CHAIRMAN GETZ: Well, I guess, let me  
3 make this observation. And, why this issue may be  
4 somewhat different from some of the earlier ones, and note  
5 how the Committee has imposed conditions in some past  
6 cases. But, for instance, on the "financial capability",  
7 we've had a discussion and concluded that they have

8 demonstrated financial capability. We determined,  
9 however, that we would later, meaning probably sometime  
10 Monday, hopefully, consider conditions related to  
11 financing. For instance, the one that's been proposed by  
12 the Applicant about them "not commencing construction  
13 until construction financing is in place". That doesn't  
14 really go to the issue of whether they have financial  
15 capability, but it goes to the issue -- but it is related  
16 to financing.

17 And, so, there's been a couple of issues  
18 so far along that way. We've been able to make our  
19 finding, but we also may be imposing related conditions,  
20 depending on our discussion later.

21 With respect to water quality here, and  
22 the DES permits in general, I think it's probably a fair  
23 statement, and I guess counsel can correct me if I'm  
24 wrong, but the -- in most cases, that the Site Evaluation

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1 Committee has had, it has routinely adopted the permits  
2 from DES as conditions. And, I would expect that may be  
3 the minimum that we do in this case. But we have a number  
4 of other conditions that have been proposed that we may  
5 want to consider. So, I guess the issue then is, whether  
6 we want to -- can we treat this issue like we've treated  
7 some other issues and make a finding, without addressing  
8 all the conditions in addition to the permit conditions  
9 from DES? Or, would it be better to defer a finding on  
10 that issue and separately try to review the permits and  
11 all of the other conditions, so that we have them all in a  
12 package, then that will inform our decision on whether

13 there's a demonstration that there will be no unreasonable  
14 adverse effect on air and water quality? So, I just pose  
15 that. Director Normandeau.

16 DIR. NORMANDEAU: Thank you. I would  
17 agree that it might be done as a package, because, unlike  
18 the others, you can't say, absent all the conditions to  
19 make it so, that there's no adverse effect on water  
20 quality, I would say. Some of the others, you can say  
21 they have the ability to finance. We need a few things to  
22 make sure it happens the way we want for the purposes.  
23 But, in this respect, I don't think you can simply say  
24 that it's -- that it's without impact and everything is

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1 fine, unless those conditions are all part of the package,  
2 if you will.

3 CHAIRMAN GETZ: Mr. Janelle.

4 MR. JANELLE: So, if I understand you  
5 correctly, there's two permits that have been issued. We  
6 have conditions for those two permits. We have proposed  
7 conditions for the other permit, and we would review those  
8 before finding -- before making our finding, is that what  
9 we're talking about?

10 CHAIRMAN GETZ: Yes.

11 MR. JANELLE: Okay. I would agree. I  
12 would think we would want to understand those thoroughly  
13 and try to incorporate those wherever we can as  
14 conditions.

15 CHAIRMAN GETZ: And, other conditions  
16 that have been proposed by the parties, when we consider  
17 which, if any, or what number or in what permutations we

18 might also add.

19 MR. JANELLE: Yes.

20 CHAIRMAN GETZ: All right. Well, then,  
21 is it the sense of the Committee then that we would  
22 address those, all of the issues, when we get to a full  
23 discussion of the conditions? And, I would suggest that  
24 we do have the conditions, and I would ask -- I had asked  
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1 previously that all the parties provide us a separate  
2 appendix to each of the briefs, showing all of their  
3 conditions. And, I guess I would ask counsel to, you  
4 know, to provide us with a Word document that, you know,  
5 puts all the conditions in categories in one place, and  
6 then we'll have that to consider over the weekend. And,  
7 then, we can have a -- address all of these issues again,  
8 I hope, on Monday.

9 So, Mr. Harrington.

10 MR. HARRINGTON: Just a question,  
11 because this kind of goes along with those conditions.  
12 One of the questions that I had asked about was there was  
13 a lot of talk about a "post construction monitoring plan",  
14 and there was a lot of discussion as to exactly what that  
15 was. And, so, per my request, took out a Petitioner  
16 Exhibit Number 49 to provide us a scope of what a post  
17 monitoring construction plan would include, so we get some  
18 idea what that is. Now, to the best of my knowledge, and  
19 the latest list through April 3rd, that's still listed as  
20 "reserved". So, I'm just -- I don't know how we go  
21 forward here, but what are we doing about the scope of a  
22 post construction monitoring plan?

23 MR. IACOPI NO: I think we have received  
24 most of those, the documents that are listed and reserved  
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1 in the Exhibit List.

2 MR. HARRINGTON: Because that would be  
3 germane to this discussion. That's one of the things that  
4 they're telling us what they're going to monitor  
5 afterwards, which would be part of our, if it's already  
6 there, we wouldn't have to invent a new condition type  
7 thing.

8 MR. IACOPI NO: That is in a data  
9 request, it's marked as "Petitioner 49".

10 MR. HARRINGTON: Well, maybe if you  
11 could just have it for us on Monday, because I think it  
12 may eliminate the implication of coming up with some  
13 conditions that were already -- that the Applicant has  
14 already committed to to deal with.

15 MR. IACOPI NO: Will do.

16 CHAIRMAN GETZ: Okay. Any other  
17 discussion about this issue then? Because I'm assuming  
18 that, if there's not, then we would defer a discussion of  
19 a motion on a finding, and then move onto the discussion  
20 by Mr. Harrington on whether the operation of the project  
21 is consistent with the state energy policy?

22 (No verbal response)

23 CHAIRMAN GETZ: So, hearing nothing,  
24 then, Mr. Harrington.

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1 MR. HARRINGTON: Okay. So, this is  
2 IV(d), "Operation is consistent with the state energy  
3 policy established in RSA 378:37", which is rather brief.  
4 Just says "The general court declares that it is in the  
5 energy policy of the state to meet the energy needs of its  
6 citizens and businesses of the state at the lowest  
7 reasonable cost, while providing for the reliability and  
8 diversity of energy sources, protection of the safety and  
9 health of the citizens, the physical environment of the  
10 state, and future supplies of non-renewable resources and  
11 consideration of the financial stability for the state's  
12 utilities." Well, I think we can eliminate that last  
13 clause there, because this has nothing to do with the  
14 financial stability of the state's utilities. And,  
15 probably, the "protection of the safety and health of the  
16 citizens and the physical environment of the state" may be  
17 better discussed during those appropriate when we get to  
18 those. Because it -- So, I'm not going to deal with those  
19 right now.

20 In the various filings, the Applicant  
21 filed, in their final brief, a couple of pages on why they  
22 think it met the requirements of that section of the law.  
23 It talks about its positive effect on air quality. The  
24 fact that there's only 24 megawatts of wind right now, and  
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1 we have Renewable Portfolio Standards, which require more,  
2 mentions diversity of generation. And, it basically  
3 assessed that it wouldn't make these requirements, it says  
4 that the windpark is a price taker, so therefore it would  
5 help lower the costs.

6 In other submittals, there wasn't a lot  
7 on this particular issue. And, the Public Counsel, it  
8 said "the state energy", and I'll read this because it's  
9 so short, "the state energy policy with respect to siting  
10 wind generating plants is not developed." I think they're  
11 referring to the siting of wind, there was a -- some type  
12 of a committee, which I believe Mr. Scott was on, that  
13 looked into that, but it was never codified into law.

14 So, it's safe to conclude, to the extent  
15 the state energy policy supports the development of  
16 additional sources of energy and diversification, this  
17 project is consistent with that policy.

18 The only other one was from the New  
19 Hampshire Wind Energy Association, which talks about the  
20 potential for a lot of wind generation in this part of New  
21 Hampshire, and that most of the wind, in accordance with  
22 the studies, are located at fairly high altitudes, and  
23 basically it supports this and says it would support the  
24 state energy policy.

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1 So, since that part of the state energy  
2 policy is actually somewhat dated, I did go forward to see  
3 what other sources we could have on that. And, if you go  
4 to Chapter 362-F, which is the Electric Renewable  
5 Portfolio Standard, and just a few highlights from that.  
6 Under the purpose, it says they're "trying to provide fuel  
7 diversity, use local renewable fuels, lower regional  
8 dependence on fossil fuels, keep energy and investment  
9 dollars in the state to benefit our own economy, employ  
10 low emission forms of such technologies to reduce

11 greenhouse gases, nitrous oxides, and particulate matter.  
12 And, therefore, it's in the public interest to stimulate  
13 investment in low emission renewable energy generation  
14 technologies in New England, and particular in New  
15 Hampshire." And, you also have the Governor's  
16 Proclamation or Executive Order, which is Executive Order  
17 Number 2007-3, which talks about committing to the 25 in  
18 '25 Renewable Energy Program, among other things. So,  
19 that kind of lays out what the various opinions were and  
20 what the policy of the state is. So, do we want to --

21 CHAIRMAN GETZ: Well, let's have a  
22 discussion. Director Normandeau.

23 DIR. NORMANDEAU: Just a quick question  
24 of Mike. How does the -- doesn't the Governor have a  
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1 25 percent renewables goal or something to that effect?

2 MR. HARRINGTON: Yes. That was the  
3 Executive Order I mentioned, the "25 in '25".

4 DIR. NORMANDEAU: Oh. Okay. Okay.  
5 All right. So, it figures into the state's energy policy  
6 then?

7 MR. HARRINGTON: Yes.

8 DIR. NORMANDEAU: That's all I have.

9 CHAIRMAN GETZ: Mr. Scott.

10 DIR. SCOTT: Mr. Harrington mentioned I  
11 think it's 362-F, which is the Renewable Portfolio  
12 Standard. While I concur there's not a lot out there on  
13 what the "state energy policy" is, that legislation,  
14 again, so it's state law and the will of the Legislature,  
15 incentivize renewables to the point where, when I say

16 "incentive", it provide an economic incentive to make sure  
17 these things happen. And, the renewables, that includes  
18 wind development.

19 MR. HARRINGTON: Yes, I think, looking  
20 at the goals that are in there, and wind is considered a  
21 Class I resource in the Renewable Portfolio Standard  
22 legislation. And, it starts out in 2008, I guess, with  
23 0 percent, and goes up to 0.5, 1, 2, 3, 4, 5, 6, and  
24 finally reaching, in 2000 -- it's slanted, I don't now if

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1 it's 2014, 2015, 16 percent. And, if you look at what  
2 qualifies as Class I, there's wind energy, which we know  
3 we have 24 megawatts in New Hampshire right now, there's  
4 geothermal energy, which I don't believe there's any  
5 geothermal energy projects that are in the ISO queue.  
6 Hydrogen derived from biomass fuels for methane, again, I  
7 don't think there's anything on the books for that. Ocean  
8 thermal, wave, current, or tidal energy, there was a  
9 project in the Piscataquog River that was recently  
10 withdrawn, and they've notified FERC that they're  
11 submitting their license application, because they're not  
12 going to renew it. And, then, there's methane gas, and  
13 there is some of that. There's a small landfill gas in  
14 the North Country, as well as the Rochester landfill, the  
15 UNH project, but those are pretty small. I think, total,  
16 they're in the 10, around 10 to 12 megawatt range. And,  
17 then, eligible biomass technologies, which would be new  
18 biomass plants, which there are a few of in the  
19 interconnection queue. Most notably there, and you might  
20 say that the existing biomass plants, which we do have a

21 few up and running, are a separate class. And, they would  
22 not count towards the Class I goals. They're in their own  
23 class as Class III. So, my point here is that, if we're  
24 going to establish this goal, it looks like it's going to

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1 have to be done predominantly using wind energy in New  
2 Hampshire. And, some of the wind density maps that were  
3 presented to us show that the best wind sites in New  
4 Hampshire, at least onshore sites, are clearly in this  
5 area. And, if you were to look at the other wind projects  
6 that are in the queue in New Hampshire, there are a couple  
7 of ones, and one fairly large one, and it's in the same  
8 area in northern New Hampshire.

9 So, it looks like, if we're going to  
10 meet that goal for the Class I Renewable Portfolio  
11 Standard, we're going to have to meet it with -- a high  
12 degree of that is going to have to be wind energy. And,  
13 if we're going to have wind energy, it looks like a lot of  
14 it's going to have to come from this area of the state.

15 Oh, and the other thing is, it clearly  
16 meets the diversity, fuel diversity, there is a lot of  
17 concern with an over reliance on natural gas in New  
18 England as a whole. Clearly, a lot of the new plants in  
19 the queue could even have a higher percentage of natural  
20 gas than we had in the past. So, that's an issue. This  
21 is obviously not natural gas. It doesn't pollute from a  
22 air emissions point of view. And, the Applicant's  
23 assertion that it would be a price taker I believe is  
24 correct. It would tend to lower prices, because, once

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1 this is built, they're always going to be in a price taker  
2 mode, because there's no additional fuel costs. So,  
3 whether it be in the capacity market or the energy market,  
4 they will be price takers, and tend to lower the cost for  
5 everybody because of that.

6 CHAIRMAN GETZ: Further discussion?

7 (No verbal response)

8 CHAIRMAN GETZ: Okay. Then, let me take  
9 a sense of the Subcommittee. Is there a sense that the  
10 Applicant has demonstrated that operation of the project  
11 is consistent with the state energy policy? If you agree  
12 with that statement, please raise your hand.

13 [Show of hands]

14 CHAIRMAN GETZ: Okay. Looks like that's  
15 unanimous. So, then, --

16 MR. HARRINGTON: Just one other thing I  
17 would like to say for the record. In the submissions, at  
18 least in the final briefs, as best I could tell, nobody  
19 ascertained that this was not -- or, no one had suggested  
20 that it was not in compliance with the state energy  
21 policy, this project.

22 CHAIRMAN GETZ: Okay. I would move that  
23 we find that the Applicant has demonstrated that operation  
24 of its proposed project is consistent with the state

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1 energy policy.

2 MR. HARRINGTON: Second the motion.

3 CHAIRMAN GETZ: Okay. And, any  
4 discussion?

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5 (No verbal response)

6 CHAIRMAN GETZ: Hearing no discussion,  
7 then all those in favor of the motion, signify their  
8 support by saying "aye"?

9 (Multiple members indicating "aye".)

10 CHAIRMAN GETZ: Any opposed?

11 (No verbal response)

12 CHAIRMAN GETZ: None opposed. So, the  
13 motion carries. Well, at this point, I guess I would  
14 propose that we recess until Monday morning, at 10:00.  
15 But, let's, before we do that, any questions?

16 Mr. Northrop.

17 MR. NORTHROP: Well, not a question,  
18 just a reminder. Were you going to address the post  
19 hearing brief by Farrell Seiler?

20 CHAIRMAN GETZ: Oh, there is a -- yes,  
21 let me just point that out. Mr. Seiler --

22 MR. IACOPI NO: New Hampshire Wind Energy  
23 Association.

24 CHAIRMAN GETZ: -- the New Hampshire

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1 Wind Energy Association, they submitted its brief, and I  
2 ask counsel to confirm this, I believe it was received at  
3 6:00 in the evening, or thereabouts?

4 MR. IACOPI NO: Approximately.

5 CHAIRMAN GETZ: And, the agreement and  
6 the requirement was that the briefs be filed by noon on  
7 Friday. And, I know we had a lengthy discussion that  
8 everybody be using the same timeline or same deadline, so  
9 that no one would receive an advantage over another. So,

10 I would, I guess, as presiding officer, I would rule that  
11 the New Hampshire Wind Energy Association's brief is  
12 untimely and should not be considered as part of our --  
13 part of our deliberations. And, you know, just for the  
14 record, note there were several, it's four pages long, and  
15 only had several issues that were commented on. But my  
16 ruling would be that it not be considered by us in our  
17 deliberations.

18 MR. IACOPI NO: We also probably should  
19 have the record reflect that two of the intervenors, Wayne  
20 Urso and Sonja Sheldon, have sent e-mails to the Committee  
21 indicating that they withdraw as intervenors.

22 CHAIRMAN GETZ: Okay. All right.  
23 Anything else this afternoon?

24 (No verbal response)

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1 CHAIRMAN GETZ: Okay. Hearing nothing,  
2 then we will recess until 10:00 Monday morning. Thank  
3 you, everyone.

4 (Whereupon the deliberations were  
5 adjourned at 4:04 p.m. and the  
6 deliberations to resume on April 20,  
7 commencing at 10:00 a.m.)

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