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P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. And, welcome to a public meeting of the
4 New Hampshire Energy Facility Site Evaluation Committee.
5 We have one docket for consideration on today's agenda,
6 and that is the New Hampshire Site Evaluation Committee
7 SEC Groton Wind Docket Number 2010-01.

8 And, before turning to our agenda, I'd
9 like to ask the members of the Committee to introduce
10 themselves. Again, my name is Tom Burack. I serve as
11 Commissioner of the Department of Environmental Services.
12 And, for purposes of this proceeding, I serve as the
13 Presiding Officer. And, turn to my far left here.

14 DIRECTOR SIMPKINS: Brad Simpkins,
15 Director of Division of Forests & Lands within the
16 Department of Resources & Economic Development.

17 COMMISSIONER SCOTT: Bob Scott,
18 Commissioner with the New Hampshire Public Utilities
19 Commission.

20 VICE CHAIRMAN HONIGBERG: Martin
21 Honigberg, Chair of the New Hampshire Public Utilities
22 Commission.

23 MR. BOISVERT: Richard Boisvert, Deputy
24 State Historic Preservation Officer, New Hampshire

1 Division of Historical Resources.

2 DIRECTOR BAILEY: Kate Bailey,
3 designated engineer for the Public Utilities Commission.

4 DIRECTOR WRIGHT: Craig Wright, Director
5 of the Air Resources Division at the Department of
6 Environmental Services.

7 DIRECTOR HATFIELD: Meredith Hatfield,
8 Director of the Office of Energy & Planning.

9 DIRECTOR FORBES: Gene Forbes, Director
10 of the Water Division, Department of Environmental
11 Services.

12 CHAIRMAN BURACK: Ms. Bailey, I just
13 want to confirm that you have previously been designated
14 officially on the record in this proceeding to be the
15 engineer of record here?

16 DIRECTOR BAILEY: I can't remember,
17 honestly. It was a long time ago. I think Chairman Getz
18 was Chair when this first came up.

19 CHAIRMAN BURACK: So, --

20 VICE CHAIRMAN HONIGBERG: To the extent
21 necessary, Commissioner Scott and I will designate Kate
22 Bailey to serve as the engineer on this proceeding. And,
23 that's just a matter for the PUC Commissioners to deal
24 with.

1 CHAIRMAN BURACK: Okay. Do you want to
2 make that a formal motion and vote?

3 COMMISSIONER SCOTT: So moved.

4 VICE CHAIRMAN HONIGBERG: Seconded. All
5 in favor?

6 COMMISSIONER SCOTT: Aye.

7 VICE CHAIRMAN HONIGBERG: Aye.

8 CHAIRMAN BURACK: Thank you. That is
9 official then. We do, I find, have a quorum to be able to
10 take this matter up today. So, we will turn to this
11 docket. And, I have some fairly lengthy background
12 materials to present, so that we all understand the
13 context of what we're dealing with, and the plan that I
14 have for how we will proceed to consider and address these
15 matters today. So, let me start with this history here.

16 On May 6, 2011, a Subcommittee of the
17 Site Evaluation Committee issued a Decision Granting a
18 Certificate of Site and Facility with Conditions, and we
19 will refer to that as the "Certificate", to Groton Wind,
20 LLC, which we will refer to often as the "Applicant",
21 authorizing the construction and operation of a renewable
22 energy facility consisting of 24 Gamesa G82 turbines, each
23 having a nameplate capacity of 2 megawatts, for a total
24 nameplate capacity of 48 megawatts. And, we will often

1 refer to that entire set of turbines and other associated
2 equipment as the "Facility". The Facility is located on a
3 site that is entirely within the Town of Groton, in
4 Grafton County, New Hampshire. And, that entire area we
5 will often refer to as the "Site".

6 On October 14, 2011, the New Hampshire
7 Supreme Court issued an order declining to review the
8 Decision on appeal.

9 The Applicant subsequently constructed
10 the Facility. The Facility has commenced commercial
11 operations.

12 Since the commencement of commercial
13 operations, the Committee received several complaints
14 regarding the operation of the Facility. The complaints
15 generally involve allegations that the Applicant has
16 failed to conform to the conditions of the Certificate,
17 and that misrepresentations were made by the Applicant's
18 representatives to the Subcommittee. In addition, the
19 Applicant filed a motion to amend the terms and conditions
20 of the Certificate.

21 A brief overview of the issues and
22 procedural background follows. There are five separate
23 issues, and I want to take a few minutes to summarize each
24 of those issues, and then describe how we propose to

1 consider each of them.

2 Starting first with the winter
3 maintenance issues. On December 31, 2012, the Committee
4 received two letters from the Selectmen of the Town of
5 Rumney, expressing concerns about the safety and
6 maintenance of the turbine roads within the Site during
7 the winter months. On January 11 and January 14, 2013,
8 the Applicant delivered two letters to the Committee
9 responding to the concerns raised by Rumney. Rumney
10 provides fire protection and emergency medical services to
11 the Town of Groton.

12 On January 16, 2013, Rumney replied to
13 the Applicant's response indicating that the issue of the
14 maintenance of the turbine roads within the site during
15 the winter months remained unresolved. Subsequent
16 meetings amongst safety officials resulted in the drafting
17 of an Environmental Health and Safety Plan, which I will
18 refer to as the "Safety Plan". The Safety Plan was filed
19 with the Committee on October 11, 2013. Counsel for the
20 Public responded to the Safety Plan with concerns on
21 October 18, 2013. Rumney objected to the Safety Plan on
22 November 14, 2013. The Department of Safety, through its
23 Office of the Fire Marshal, which I will refer to as the
24 "Fire Marshal", filed its response to the Safety Plan on

1 November 18, 2013. An intervenor, Mark Watson, filed his
2 objection to the Safety Plan on November 18, 2013.

3 On April 14, 2014, the Applicant filed a
4 Contested Motion for Approval of Amendment to the Town of
5 Groton Agreement. The motion referenced an agreement
6 between the Applicant and the Town of Groton that had been
7 previously approved and incorporated into the conditions
8 of the Certificate. The Applicant advised the Committee
9 that the Applicant and Groton executed an amendment to the
10 agreement. The amendment pertains to the issue of winters
11 road maintenance and access to the Site by emergency
12 responders. The Applicant requested the Committee to
13 amend the Certificate to incorporate and reflect the
14 amended agreement. Counsel for the Public objected to the
15 Applicant's request on April 21, 2014. The Buttolph Lewis
16 intervenors objected to the Applicant's request on April
17 24, 2014.

18 On June 12, 2014, the Applicant filed an
19 e-mail received from counsel for Rumney advising the
20 Committee that Rumney does not have any outstanding issues
21 with the Applicant. Rumney's correspondence appears to
22 apply to the original concerns about winter maintenance
23 and Site access as originally expressed by Rumney in its
24 correspondence from December 2013 and January 2014. The

1 Applicant's Motion to Approve the Agreement with the Town
2 of Groton remains pending.

3 Let me turn now to summarize the second
4 issue, which is the Motion to Reopen and Conformance with
5 the Certificate. On January 14, 2013, James Buttolph, on
6 behalf of the Buttolph Lewis intervenors, filed a letter
7 with the Committee asking the Committee to reopen the
8 record. In support of his request, Mr. Buttolph alleges
9 that the construction of the Facility within the Site did
10 not comport with the plans as approved by the Committee,
11 and that there were significant revisions to the Site
12 specifically regarding the location of the operation and
13 maintenance, or O&M, building and the location of two wind
14 turbines. Mr. Buttolph also asserts that the revisions to
15 the Site and Facility were outside of the purview of the
16 Wetlands Permit conditions and the Alteration of Terrain
17 Permit conditions.

18 On January 16, 2013, the Applicant
19 responded to Mr. Buttolph's letter. In response, the
20 Applicant asserted that the revisions to the plans and the
21 Facility as constructed were properly submitted to the
22 Department of Environmental Services as modifications or
23 amendments to the Wetlands Permit and the Alteration of
24 Terrain Permit. The Applicant asserts that further review

1 by the Committee was unnecessary under the terms of the
2 Certificate.

3 On January 30, 2013, Ms. Marianne
4 Peabody requested the Committee to allow her to intervene
5 in the docket. Ms. Peabody alleged that the value of her
6 property was affected by the Applicant's failure to
7 construct the O&M building in compliance with the
8 Certificate. Rumney also raised its concerns with
9 relocation of the O&M building on January 31, 2013.

10 On February 13, 2013, Counsel for the
11 Public responded to Mr. Buttolph's request. Counsel for
12 the Public requested the Committee to issue an order
13 requiring the Applicant to move the O&M building to its
14 originally proposed location or, alternatively, to suspend
15 the Certificate.

16 On October 3, 2013, Mr. Mario Rampino
17 requested the Committee to grant him intervenor status.
18 In his request, Mr. Rampino alleged that the Applicant
19 caused him immediate and irreparable harm by constructing
20 the O&M building in a location not contemplated by the
21 Certificate. Mr. Rampino's motion to intervene was
22 granted on November 4, 2013. On February 12, 2014,
23 Mr. Rampino withdrew his claims against the Applicant and
24 relinquished his status.

1 On March 24, 2014, Marianne Peabody
2 withdrew her claims against the Applicant and relinquished
3 her status as an intervenor.

4 On July 16, 2014, Counsel for the Public
5 advised the Committee that he had reached a settlement
6 agreement with the Applicant and filed a withdrawal of the
7 enforcement claims pending in this docket. On July 16,
8 2014, the Applicant also filed a Motion to Approve
9 Settlement Agreement between the Applicant and Counsel for
10 the Public. The Buttolph Lewis intervenors objected to
11 the Applicant's request on July 28, 2014.

12 On August 20, 2014, Mr. James M.
13 Buttolph, Ms. Cheryl Lewis, and Mr. Carl Spring withdrew
14 their claims against the Applicant and relinquished their
15 status as intervenors in this docket. The motion to
16 reopen was thus withdrawn.

17 The Settlement Agreement filed by
18 Counsel for the Public requires consideration and remains
19 pending.

20 I'm going to turn now to summarize the
21 third issue, which are the Fire Marshal enforcement
22 issues. On August 12, 2013, the Committee received a
23 letter from Investigator Ron Anstey on behalf of the Fire
24 Marshal. In his letter, Investigator Anstey alleged that

1 statements made in testimony by the Applicant's
2 representatives at the time of the adjudicatory hearing
3 were not true. In addition, Investigator Anstey's letter
4 alleged that the Applicant has failed to comply with
5 applicable Fire and Building Codes and, therefore, has
6 failed to comply with the conditions of the Certificate in
7 this matter. Investigator Anstey recommended that all
8 operation on the Site cease until all safety concerns,
9 plans, reviews, and required inspections have been
10 completed and approved. Inspector Anstey's request, if
11 granted, would result in a suspension of the Certificate.

12 On September 30, 2013, Mr. Mark Watson
13 requested the Committee to grant him intervenor status.
14 In his motion, Mr. Watson asserted that he was concerned
15 about the Fire Marshal's allegation that the Applicant had
16 not installed a fixed fire suppression system and that he
17 resided in proximity to the Site. He was concerned that
18 his home would be threatened in the event of a fire on the
19 Site. Mr. Watson's motion was granted on November 14 --
20 I'm sorry, on November 4, 2013. He was allowed to appear
21 *pro se*.

22 On October 18, 2013, the Fire Marshal
23 filed a letter setting forth the sections of the State
24 Building Code. And, those are International Building

1 Code, 2009 Edition; the New Hampshire State Fire Code
2 (NFPA 1, 2009 Edition; NFPA 101, 2009 Edition; NFPA 10;
3 NFPA 12; and NFPA 72) and the Recommended Practice for
4 Fire Protection for Electric Generating Plants and High
5 Voltage Direct Current Converter Stations, NFPA 85, that
6 he claims forms the basis for his authority and for the
7 appropriate operation of the Facility in accordance with
8 the Certificate. The Fire Marshal's letter also sets
9 forth additional relevant codes and provisions. The
10 Applicant responded on November 18, 2013.

11 On April 16, 2014, the Fire Marshal
12 advised the Committee that it had entered into a
13 Compliance Agreement with the Applicant designed to
14 resolve any and all issues raised by the Fire Marshal. On
15 April 21, 2014, the Fire Marshal filed a Partially
16 Assented-To Motion to Stay, requesting the Committee to
17 stay all proceedings as they related to the issues raised
18 by the Fire Marshal.

19 On May 8, 2014, the Committee issued an
20 Order on Pending Motions Pertaining to Issues Raised by
21 the Fire Marshal. The Committee granted the Fire
22 Marshal's Motion to Stay and stayed the proceedings, as
23 they related to the issues raised by the Fire Marshal,
24 pending the Applicant's compliance with the Agreement.

1 The Committee further requested the Fire Marshal to notify
2 the Committee of the Applicant's compliance with the
3 Compliance Agreement within 30 days of the date of the
4 Order. A status conference was scheduled for June 12,
5 2014.

6 On June 9, 2014, pursuant to the
7 Committee's request, the Fire Marshal filed a Report on
8 the Status of the Applicant's Compliance with the
9 Compliance Agreement advising the Committee that the
10 Applicant was compliant or in the process of becoming
11 compliant with the Compliance Agreement. On October 4,
12 2014 [October 6, 2014?], the Office of Fire Marshal filed
13 a Final Report on the status of Applicant's compliance
14 with the Compliance Agreement. The Final Report finds the
15 Applicant to be in full compliance. Consideration of the
16 Fire Marshal's Compliance Agreement remains pending in
17 this docket.

18 I'm going to turn now to the fourth
19 item, which is the Applicant's Motion to Amend the
20 Certificate. And, let me summarize that now. On December
21 4, 2013, the Applicant filed a Contested Motion to Amend
22 Certificate of Site and Facility. The motion asked the
23 Committee to amend the Certificate to reflect the as-built
24 specifications of the O&M building and to approve its new

1 location. The motion also asked the Committee to approve
2 the as-built locations of Turbines E-2 and E-3, as well as
3 the reconfigured road accessing the turbines. The motion
4 also seeks approval of other minor changes to the
5 Certificate.

6 Counsel for the Public, Mr. Watson, and
7 the Buttolph Lewis intervenors objected on December 16,
8 2013. The Fire Marshal also filed a response on December
9 16, 2013.

10 On February 12, 2014, Mr. Rampino
11 withdrew his claims against the Applicant and relinquished
12 his status. In withdrawing his claims, Mr. Rampino also
13 withdrew any objection to the Applicant's motion to amend
14 the Certificate.

15 On March 24, 2014, Marianne Peabody
16 withdrew her claims against the Applicant and relinquished
17 her status as an intervenor. In withdrawing her claims,
18 Ms. Peabody also withdrew any objection to the Applicant's
19 motion to amend the Certificate.

20 On July 16, 2014, Counsel for the Public
21 advised the Committee that he had reached a Settlement
22 Agreement with the Applicant and filed a Withdrawal of
23 Enforcement Claims pending in this docket. Consequently,
24 on July 16, 2014, the Applicant filed a Motion to Approve

1 Settlement Agreement between the Applicant and Counsel for
2 the Public. The Settlement Agreement and withdrawal of
3 enforcement claims appear to resolve most issues in
4 dispute between Counsel for the Public and the Applicant,
5 including issues related to the Fire Marshal's Compliance
6 Agreement. Consideration of the Settlement Agreement
7 remains pending before the Committee, as does
8 consideration of the Motion to Amend the Certificate.

9 So, with that summary as background, at
10 this point I would like to take appearances, starting with
11 appearance from counsel for the Applicant, then Counsel
12 for the Public, counsel for the Fire Marshal, and from
13 Mr. Watson. Would you like to proceed please?

14 MS. GEIGER: Yes. Thank you. Good
15 morning, Mr. Chairman and members of the Committee. My
16 name is Susan Geiger. And, I'm with the law firm of Orr &
17 Reno. I represent the Applicant, Groton Wind, LLC. And,
18 with me today at counsel's table are Toan Nguyen, attorney
19 for Iberdrola, the parent company of Groton Wind, LLC; Ms.
20 Monique Menconi, from Iberdrola; and Mr. Peter Walker, of
21 VHB Associates, the Project's engineering and
22 environmental consultants from Bedford.

23 CHAIRMAN BURACK: Would you be kind
24 enough please just to spell the last names of your

1 colleagues who are here?

2 MS. GEIGER: Yes. I'll try from memory.

3 CHAIRMAN BURACK: Want to help out our
4 stenographer here.

5 MS. GEIGER: Okay. Attorney Nguyen,
6 N-g-u-y-e-n.

7 CHAIRMAN BURACK: Thank you. And, first
8 name again is?

9 MS. GEIGER: Toan, T-o-a-n.

10 CHAIRMAN BURACK: Thank you.

11 MS. GEIGER: And, Ms. Menconi is Monique
12 Menconi, M-e-n-c-o-n-i.

13 CHAIRMAN BURACK: Wonderful. Thank you
14 very much.

15 MS. GEIGER: And, Mr. Walker.

16 CHAIRMAN BURACK: Thank you.

17 MR. ROTH: Good morning, Mr. Chairman
18 and members of the Committee. Peter Roth, Counsel for the
19 Public.

20 CHAIRMAN BURACK: Thank you.

21 MS. MARTIN: Good morning. Dianne
22 Martin, for the Department of Safety, Office of the Fire
23 Marshal.

24 CHAIRMAN BURACK: Thank you.

1 MR. WATSON: Good morning. Mark Watson,
2 intervenor, from Groton, New Hampshire.

3 CHAIRMAN BURACK: Thank you all very
4 much. Here's how I plan to have us proceed in this
5 docket. First, we will take up each of the pending
6 matters one at a time and seek to resolve each before
7 moving to the next one. And, the sequence that I
8 anticipate is as follows: We will first take up the
9 proposed settlement agreement between Counsel for the
10 Public and the Applicant. Second, we will take up the
11 Applicant's request that we approve its settlement
12 agreement with the Town of Groton. Third, we will take up
13 the Fire Marshal's Compliance with the Applicant. And,
14 fourth, we will take up the Applicant's Environmental
15 Health and Safety Plan. And, finally, we will take up the
16 Applicant's Motion to Amend the Certificate for the
17 Facility. And, again, we will move through this as
18 expeditiously as we reasonably can, but want to ensure
19 that the process is thorough in all respects. We will
20 plan to take a break, unless we are done before then, we
21 will plan to take a lunch break at some point midday
22 today, and seek to conclude this afternoon.

23 So, let me turn first then to addressing
24 the Counsel for the Public's request to approve the

1 Settlement Agreement with the Applicant. We will allow
2 Counsel for the Public to make a short presentation to the
3 Committee as to the status of his request. When Counsel
4 for the Public's presentation is complete, we will allow
5 the Applicant to state its position, then we will allow
6 Mr. Watson to present his position as to Counsel for the
7 Public's request to approve the Settlement Agreement with
8 the Applicant. Thereafter, we will open the floor to
9 Committee questions. Those questions may be answered by
10 the Counsel for the Public or any other party to this
11 proceeding that may be present. However, before anyone
12 speaks, I would ask that they identify themselves clearly,
13 so I can recognize them, and, again, if necessary, we will
14 need to have names spelled for the record.

15 Once we have addressed all issues
16 related to the Counsel for the Public's request to approve
17 the Settlement Agreement, we will likely take a moment to
18 determine what the next steps in this docket might be. It
19 is most likely that we will deliberate and make a decision
20 whether to approve or deny Counsel for the Public's
21 request to approve the Settlement Agreement with the
22 Applicant.

23 So, I would now ask Counsel for the
24 Public to provide a summary of his request.

1 MR. ROTH: Thank you, Mr. Chairman.
2 Counsel for the Public made a joint motion with the
3 Applicant, which is kind of an unusual thing for a Counsel
4 for the Public to do.

5 CHAIRMAN BURACK: Would you sit down
6 please and get closer to the microphone. It would be
7 easier to hear you. Thank you.

8 MR. ROTH: I'm not accustomed to sitting
9 down before the tribunal, unless I'm in chains.

10 I moved to, with Groton Wind, to approve
11 a Settlement Agreement which resolves the enforcement
12 claims that have been championed by Counsel for the Public
13 these past couple years. As the recitation shows, when we
14 were alerted or informed by members of the public that it
15 appeared that the Project had been constructed in a place
16 other than where the Certificate allowed in certain
17 respects, including the operations and maintenance
18 facility and certain parts of the turbine array, this was
19 a matter of great concern.

20 It was not clear why it was done the way
21 it was done, and what the impact of that was. What we
22 were learning was that people who resided in the immediate
23 vicinity of the O&M building, at the end of Groton Hollow
24 Road, were, to put it mildly, extremely upset that this

1 building was constructed in their midst. In the case of
2 Mr. Rampino, he had a commanding view of the terraces that
3 the O&M building was constructed on.

4 So, we then began to use this process to
5 push for enforcement of the Certificate. And, in our
6 view, what we were attempting to accomplish was to have
7 the building removed and put back in the place where it
8 had been originally proposed and approved for.

9 Through various efforts and good faith
10 on my part, and especially on the part of those folks from
11 Iberdrola, we were able to fashion the agreement that is
12 the subject of the motion today. And, the Agreement
13 provides a number of things. And, it acknowledges some
14 important steps that were taken in the process so far that
15 made it possible. And, the first is, and this was
16 paramount to me, was that the property owners at the end
17 of Groton Hollow Road, who were most directly affected by
18 the presence of the operations and maintenance building in
19 their midst, have reached settlement agreements and have
20 been satisfied in some fashion by the Applicant. I don't
21 know what the terms of those are. But I haven't had -- I
22 haven't heard from any of them in a very long time, and
23 they have withdrawn their claims, and I believe that they
24 are satisfied with what the arrangement was that they

1 reached with Groton Wind.

2 The second issue that was of concern to
3 me was the issues that were raised by the Fire Marshal in
4 his papers and in his comments. And, in particular, I was
5 worried about the issue of the road, it not being
6 accessible during winter months. But I also learned that
7 there were other serious issues with respect to the
8 construction of the Facility itself.

9 The Agreement that I reached with Groton
10 Hollow -- or, with Groton Wind acknowledges that the Fire
11 Marshal has settled his issues with them, and is satisfied
12 with the condition and operation of the Facility from a
13 fire and safety perspective. In addition, I would note
14 that the Town of Groton has also reached an agreement with
15 respect to the road clearing issue. And, I believe that
16 that, and I'll let Ms. Martin speak to that, but I believe
17 that that is also satisfactory to the Fire Marshal.

18 The Agreement provides an
19 acknowledgement and a statement of regret by Groton Wind.
20 And, this was an important element to me, because I was
21 convinced that the evidence showed that what Groton Wind
22 did was not in accordance with the terms of the
23 Certificate and needed to be addressed and remedied. So,
24 in addition to the statement of regret, the Agreement

1 provides for a payment by Groton Wind for the public
2 benefit, in a kind of remedial condition or remedial
3 aspect and compensation to the state for all the events
4 that led to this proceeding. And, that compensation is
5 the amount of \$160,000, the majority of which is slated to
6 go to DRED for use at the Livermore Falls area. They have
7 some issues that they need to resolve there that Director
8 Bryce has informed me of, and I think they're in some
9 planning stages. I have not been able to close the loop
10 with Mr. Bryce about that, what exactly he intends to do
11 with the money. And, I'm waiting for the black fly season
12 to begin so I can go look at it.

13 I have seen that there are comments, I
14 have heard comments from members of the public that there
15 is an impact by the Project at Livermore Falls. The
16 Settlement Agreement is not intended to be compensation or
17 mitigation for those impacts. The compensation, you know,
18 public benefit part of my settlement is with respect to
19 the O&M building. And, it just happens that it's being
20 directed at a project in the area that DRED has that could
21 use the money.

22 I think that this agreement is in the
23 public interest and is in the interest of the State of New
24 Hampshire. It resolves a hotly contested enforcement

1 claim, which the end of which we had hoped would result in
2 taking the building down and putting it back where it
3 belongs and remediating the site, which would have been
4 very disruptive and very costly to the Applicant. And,
5 there is no doubt that the litigation over that would have
6 similarly been very costly and disruptive and
7 time-consuming.

8 So, with that, I ask that the Committee
9 approve the Settlement Agreement with -- between Counsel
10 for the Public and Groton Wind with respect to the
11 enforcement claims. I would also note, and I think it's
12 plain from the face of the Agreement, that the Settlement
13 Agreement does not resolve the Motion to Amend the
14 Certificate. And, that's a separate matter, which I'll
15 address at the end of today's agenda.

16 In closing, I ask that you approve the
17 Agreement in all respects. And, I guess that's all.
18 Thank you.

19 CHAIRMAN BURACK: Thank you. Attorney
20 Geiger.

21 MS. GEIGER: Yes. Thank you. Groton
22 Wind would similarly request respectfully that the
23 Committee approve the Joint Motion to Approve the
24 Settlement Agreement with Public Counsel. The Agreement

1 resolves all of Public Counsel's enforcement complaints
2 against Groton Wind and it should therefore be approved.
3 The Agreement also, as Attorney Roth noted, reflects that
4 issues that other landowners in close proximity to the
5 Facility had, and indicates that those have been resolved
6 and that those claims have been withdrawn from this
7 proceeding.

8 Under RSA 541-A:38, the Administrative
9 Procedures Act here in New Hampshire, states that
10 "informal settlement of matters by nonadjudicative
11 processes is encouraged." Therefore, it's our claim that
12 we need not litigate further any of the matters that are
13 at issue in this docket. We believe that the Settlement
14 Agreement fully resolves them.

15 Although, the Buttolph, Lewis and Spring
16 Group of intervenors have withdrawn their objections to
17 this motion to approve the Settlement Agreement, we
18 understand that Mr. Watson has indicated in an e-mail to
19 the Chairman that this particular objection should stand.
20 And, for several reasons, we believe that that is
21 improper.

22 First, the caption of the pleading that
23 Mr. Watson alleges stands, in the plain wording of the
24 introductory paragraph of that pleading, dated July 28,

1 2014, clearly indicates that the objection was filed by
2 Ms. Linowes, Lisa Linowes, on behalf of the
3 Buttolph/Lewis/Spring Intervenor Group, of which
4 Mr. Watson is not a member.

5 Second, although the signature line
6 includes Mr. Watson's name, he didn't sign it. It was
7 only signed by Ms. Linowes, whose appearance in this
8 docket is on behalf of the Buttolph/Lewis/Spring
9 Intervenor Group. Thus, it's our position that Mr. Watson
10 cannot maintain that objection in his own name.

11 Third, as I believe it was noted in the
12 Chairman's introductory comments and in the orders of
13 notice in this case, Mr. Watson intervened in this docket
14 because of recent disclosures at that time, back in
15 September of 2013, by the State Fire Marshal, that Groton
16 Wind did not have a fixed fire suppression system, and
17 that Mr. Watson was concerned about fire safety issues.
18 So, that is the basis for his intervention in this docket.

19 Lastly, even if the objection is allowed
20 to stand with respect to the Joint Motion to Approve the
21 Settlement Agreement, we should note that the objection
22 itself doesn't advocate for disapproving the Settlement
23 Agreement. The objection itself does not say to this
24 Committee "don't approve the Settlement Agreement". What

1 the objection says is, is that the SEC should require the
2 Applicant and Public Counsel to expand the Settlement
3 Agreement to provide information about how the payment
4 amount, the \$160,000 payment amount, was arrived at, and
5 justification for allocating most of the payment to the
6 Livermore Falls area.

7 In the alternative, the objection asks
8 that the information be revealed publicly before the SEC.
9 Now, this Committee has previously issued an order --
10 excuse me, Chairman Burack has issued an order back in
11 May, May 8th of 2014 in this docket, which recognizes that
12 information that is developed during the course of
13 settlement negotiations is confidential and is not
14 generally admissible in litigated proceedings, because
15 it's not relevant, and because its release would undermine
16 the public policy of encouraging settlement of disputed
17 issues.

18 Therefore, the basis for the objection,
19 i.e., that this Committee should require the Applicant and
20 Public Counsel to disclose underlying information about
21 the settlement amount, is improper and does not form a
22 formal basis -- form a proper basis for objection.

23 The policy goals I indicated previously
24 that are embodied in 541-A:38 encourage informal

1 settlement. And, therefore, Groton Wind would
2 respectfully ask that the Committee approve the Settlement
3 Agreement with Public Counsel. Thank you.

4 CHAIRMAN BURACK: Thank you, Attorney
5 Geiger. Mr. Watson.

6 MR. WATSON: Yes. Thank you, Mr.
7 Chairman. As far as the Settlement Agreement is
8 concerned, I would just like to remind the Committee that
9 the New Hampshire Administrative Rules are definitive and
10 explicit in what is allowed in a deviation from approved
11 plans. Env-Wq 1503.22(g) states that "if deviation
12 exceeds the scope listed above, the permit holder shall
13 submit a new application if the permit holder wants to
14 proceed with the project as modified." Language from Part
15 (c) is "if the center point of the parking area has been
16 relocated, no more than 100 feet of the center point of
17 the parking area as originally approved." And, the other
18 item I'd like to bring to your attention, "if the center
19 point of the structure has been relocated, nor more than
20 100 feet from the center point of the structure as
21 originally approved."

22 Groton Wind, LLC, built the Operation
23 and Maintenance Building and its associated parking lot
24 roughly 500 feet from the location designated on the

1 Certificate of Site and Facility. This is not a minor
2 deviation. The allowable limit in the Administrative
3 Rules is 100 feet before a new Alteration of Terrain
4 Permit is required.

5 It's obvious that this condition hasn't
6 been met. Until an Alteration of Terrain Permit is
7 acquired, I don't believe there should be a settlement.
8 Thank you.

9 CHAIRMAN BURACK: Thank you very much,
10 Mr. Watson. We'll now ask whether -- oh, I'm sorry. The
11 Fire Marshal's Office, Dianne Martin, do you have -- thank
12 you.

13 MS. MARTIN: The Office of the Fire
14 Marshal does not take a position on this motion. And, in
15 fact, I just wanted to remind the Committee of the limited
16 role of the Office of the Fire Marshal in these
17 proceedings. The Fire Marshal's Office was looking to
18 obtain compliance with the Fire Code and the Life Safety
19 Codes. We were able to get the Compliance Agreement.
20 And, I'm here today solely to report on the continued
21 compliance with that Agreement, and answer any questions
22 that the Committee may have.

23 CHAIRMAN BURACK: Very good. Thank you
24 very much. Appreciate that clarification of your

1 involvement here.

2 So, let me now ask whether Committee
3 members have any questions? Director Boisvert.

4 MR. BOISVERT: I must admit, I'm
5 somewhat unfamiliar with these kinds of proceedings as
6 I've never been in one before. I do wish to point out
7 that a required archeological survey was conducted on the
8 original location of the O&M building, 70 test pits were
9 excavated at that location. There was no archeological
10 investigation conducted at the new now existing location
11 of the O&M building. I am unaware of any archeological
12 research that was done there.

13 While one might mitigate some effects
14 through negotiations, archeological resources are not
15 replaceable. And, even the beginning of construction,
16 even though it might have been suspended or the building
17 taken down and moved elsewhere, it would still have the
18 same effects on archeological resources.

19 So, I'm concerned that this took place.
20 If, in fact, I'm in error about the archeological
21 research, I certainly would amend it. But, because I am
22 restricted from involvement in the day-to-day review of
23 the archeological and other cultural resources' efforts on
24 these kinds of projects, because I sit on this Committee,

1 I did not see anything come before this Committee,
2 therefore, I'm unaware of it. That information, in my
3 opinion, should have come to this Committee for
4 evaluation. It did not.

5 I'm concerned that the Parties involved
6 may perceive a procedural precedent has been established
7 where these changes can be made and not brought before the
8 Committee. Thank you.

9 CHAIRMAN BURACK: Thank you. Attorney
10 Geiger, do you want to address that? Were there, in fact,
11 any studies done at this other location at the type
12 descriptions.

13 MS. GEIGER: Yes, Mr. Chairman. Thank
14 you very much. And, I appreciate Mr. Boisvert's comments.
15 And, it's clear that DHR is maintaining what we would call
16 a "Chinese wall" between the decision-maker here,
17 Mr. Boisvert, and its staff.

18 While I'm not aware that there were any
19 particular studies that were conducted of the minor
20 modifications that are reflected in the as-built plans, I
21 am aware of correspondence from Ms. Nadine Peterson, from
22 the Division of Historical Resources, to Mr. Richard
23 Roach, in March of 2014, which reflect the fact that there
24 was a field review conducted on February 28th of 2014.

1 And, Ms. -- well, perhaps, rather than -- I can read it
2 into the record, then I can pass out copies of the e-mail,
3 if you'd like. But, basically, Ms. Peterson is saying
4 that, based upon "the field view that was conducted in
5 February of 2014", and "based upon review of [some]
6 materials, it appears there do not appear to be
7 archeological issues with the re-siting of the O&M
8 facility." And, "in addition, no visual or direct affects
9 occurred to above-ground resources due to these
10 modifications." So, this is what we have from DHR. They
11 were apprised of the changes, or at least they're familiar
12 with the facilities as constructed. And, with the
13 Committee's permission, I'd like to hand this out so that
14 you can see for yourselves, and I have copies for the
15 Parties, too, what the correspondence consists of.

16 CHAIRMAN BURACK: Thank you. You can
17 hand those to Attorney Iacopino. We will mark that as
18 "Applicant's Exhibit 1".

19 (Documents distributed.)

20 (Court reporter confirming the correct
21 numbering of the exhibit.)

22 CHAIRMAN BURACK: So, we will number
23 this exhibit in accordance with our numbering system that
24 we have been using throughout this proceeding.

1 (The document, as described, was
2 herewith marked as **Exhibit APP 74** for
3 identification.)

4 MR. BOISVERT: Thank you. It would
5 appear that the wall has been effective.

6 CHAIRMAN BURACK: Are there any other
7 questions from members of the Committee here?

8 (No verbal response)

9 CHAIRMAN BURACK: Attorney Iacopino.

10 MR. IACOPINO: Thank you. And,
11 actually, I guess I'll address this question to all of the
12 Parties. There is a suggestion that the -- at least in
13 the objection that was filed, that the Livermore Falls
14 area where the transmission line was constructed, am I
15 correct in recalling that the transmission line was part
16 of the original -- and the placement of that transmission
17 line was part of the original Certificate that was granted
18 back in 2011, and that there was not a revision to the
19 transmission line that affected Livermore Falls State
20 Park?

21 MS. GEIGER: Attorney Iacopino, I can't
22 say with certainty. I believe that it is the same
23 transmission line that was certificated. But I think it's
24 very important to note that that line belongs, I believe,

1 to the New Hampshire Electric Cooperative. But it was, in
2 fact, the line from the Facility to the substation in
3 Holderness. And, we did present information about that to
4 the Committee.

5 MR. IACOPINO: And, the Decision and
6 Order has a recognition that it was going to be
7 constructed in an existing distribution line right-of-way.
8 But that didn't change, is that your understanding?

9 MS. GEIGER: That's our understanding.
10 That did not change.

11 VICE CHAIRMAN HONIGBERG: Counsel for
12 the Public?

13 MR. ROTH: I don't have anything that
14 would suggest otherwise. I would only point out that it
15 has been represented to me that the issue of the actual
16 impacts of the placement of poles on the Livermore Falls
17 property, DRED's Livermore Falls property, was not
18 specifically addressed by the Committee or brought up by
19 DRED during the proceedings.

20 MR. IACOPINO: And, Mr. Watson, do you
21 agree that the placement of the line in the distribution
22 corridor did not change after it was approved by the
23 Committee? I understand you may have a complaint about
24 the view, but --

1 MR. WATSON: That's correct, how you
2 worded that. And, where they actually ended up on State
3 land is a whole different issue that I assume will be
4 addressed a little later.

5 MR. IACOPINO: Okay. Thank you.

6 CHAIRMAN BURACK: Commissioner Scott.

7 COMMISSIONER SCOTT: Thank you.

8 Actually, this is a question for our counsel, Attorney
9 Iacopino. Am I correct if -- that we approve this
10 Settlement, that we, as a Committee, we're not -- this
11 doesn't present us from taking further action, if we
12 believe there were violations of the Certificate, is that
13 correct?

14 MR. IACOPINO: That is correct. This
15 simply settles the enforcement claims brought by Counsel
16 for the Public.

17 COMMISSIONER SCOTT: And, further, am I
18 correct that, if we approve this Settlement, it does not,
19 assuming we rule so, it does not preclude or even imply
20 that needed permits will not be approved -- not be sought
21 and approved? Would you like me to restate that?

22 MR. IACOPINO: Yes. I don't understand
23 the question. I'm sorry.

24 COMMISSIONER SCOTT: Am I correct that,

1 if we approve this, and we were to decide later that a
2 Certificate amendment would be needed, this does not
3 preclude that, correct?

4 MR. IACOPINO: Correct. The Motion to
5 Amend the Certificate is being taken up as an entirely
6 separate item.

7 COMMISSIONER SCOTT: Thank you.

8 CHAIRMAN BURACK: I would like to ask
9 now if the Committee is prepared to have a discussion then
10 about this matter? See if there are findings or other
11 thoughts folks would like to share, before we make a
12 motion on this matter? Or, does somebody want to offer a
13 motion, and then we have discussions? I'm open to either
14 approach.

15 DIRECTOR HATFIELD: Mr. Chairman, I
16 would move that we approve the motion -- or, grant the
17 Motion to Approve the Settlement Agreement, and to amend
18 the Certificate so that it incorporates the Settlement
19 Agreement.

20 CHAIRMAN BURACK: Thank you. There is a
21 motion by Director Hatfield. Is there a second?

22 VICE CHAIRMAN HONIGBERG: I'll second.

23 CHAIRMAN BURACK: Second by Commissioner
24 Honigberg. Okay. Let's discuss that motion.

1 DIRECTOR HATFIELD: I'd just -- I would
2 like to just say "thank you" to the Settling Parties for
3 working together to negotiate this Agreement. I think
4 it's a fair resolution of the enforcement issues. And,
5 that's why I support it. Thank you.

6 CHAIRMAN BURACK: Director Bailey.

7 DIRECTOR BAILEY: I also appreciate the
8 Parties' effort to settle these important issues. I, as
9 somebody who has worked on settlement agreements, value
10 the concept of keeping negotiations confidential. And,
11 so, I would not recommend that we pursue why there was a
12 settlement on the amount of \$160,000. I think it's our
13 decision to decide whether that is adequate or not. And,
14 I believe that, since the Public Counsel has withdrawn his
15 enforcement claims, that it is in the public interest.

16 CHAIRMAN BURACK: Thank you.
17 Commissioner Honigberg.

18 VICE CHAIRMAN HONIGBERG: I agree with
19 Director Bailey, regarding the last standing objections to
20 the Settlement, which are not directly to the Settlement,
21 but on other issues. I have doubts about whether they
22 were raised properly. But, assuming that they were, I
23 would reject the objections, to the extent that they could
24 be construed as such, brought by Mr. Watson.

1 So, I would, to the extent that we are
2 resolving all the issues, should something need to be
3 appealed, I would deal with that that way. Assume that
4 those objections were properly made, and reject them.

5 CHAIRMAN BURACK: Other comments?
6 Director Simpkins.

7 DIRECTOR SIMPKINS: Yes. Just two
8 things. One, I also support the Motion, primarily because
9 the folks who were impacted the most with the relocation
10 of the O&M building withdrew their claims and objections.
11 So, for me, that's primarily the biggest point.

12 The other statement I wanted to make is,
13 as the Counsel for the Public mentioned, the Settlement
14 Agreement talks about "DRED". And, just for the record,
15 since I am a DRED representative, I had no involvement in
16 this at all. That was with Director Bryce, as Counsel for
17 the Public mentioned. So, I just wanted to put that on
18 the record.

19 CHAIRMAN BURACK: And, again, I would
20 just also, thank you for that, point out for the record
21 that Director Bryce is not sitting on this proceeding.

22 Other comments anyone would like to
23 offer?

24 (No verbal response)

1 CHAIRMAN BURACK: I may just offer a few
2 others myself. It does strike me that, again, what we've
3 heard from Counsel for the Public is that he has agreed to
4 withdraw his enforcement claims, including claims that the
5 Applicant constructed the Facility not in accordance with
6 the Certificate; his request asking that the Committee to
7 order the Applicant to move the O&M building to its
8 original certificated location has been withdrawn; as is
9 his claim that the Environmental Health and Safety Plan
10 filed by the Applicant is deficient. So, again, those
11 matters are all addressed by the Settlement Agreement.

12 I do not believe there's any reason to
13 feel that the Settlement Agreement would be contrary to
14 public policy or the goals identified by the Legislature
15 in RSA 162-H, that is our authorizing statute as a Site
16 Evaluation Committee. As we've heard, the Settlement
17 Agreement provides additional off-site mitigation. And,
18 it's also my belief that the Agreement would have no
19 effect on statutory findings made by the Committee at the
20 time of the issuance of the Certificate. So, those are
21 the reasons why I would support this motion.

22 Is there any other discussion?

23 (No verbal response)

24 CHAIRMAN BURACK: Seeing none, all in

1 favor of the motion, please signify by saying "aye"?

2 (Multiple members indicating "aye".)

3 CHAIRMAN BURACK: Any opposed?

4 (No verbal response)

5 CHAIRMAN BURACK: Any abstentions?

6 (No verbal response)

7 CHAIRMAN BURACK: Very good. Thank you.

8 That motion is unanimously adopted.

9 And, what I'd like to do now is move to
10 our second issue. Which is the Applicant's Request to
11 Approve its Agreement with the Town of Groton. And, here,
12 I will allow the Applicant to make a short presentation to
13 the Committee as to the status of its request. When the
14 Applicant's presentation is complete, we will allow
15 Counsel for the Public to state his position. We will
16 then allow Mr. Watson to present his position as to the
17 Applicant's request to approve its Agreement with the Town
18 of Groton.

19 I understand, from Attorney Martin's
20 statement earlier, that she would not have any comments on
21 this matter, is that correct?

22 MS. MARTIN: That's correct.

23 CHAIRMAN BURACK: Yes. Thank you.

24 Thereafter, we will open the floor to Committee questions.

1 Those questions may be answered, again, by the Applicant
2 or any other party to this proceeding that may be present.
3 And, once we've addressed all issues relating to the
4 Applicant's request to approve its Agreement with the Town
5 of Groton, we will likely take a moment to determine what
6 the next steps in this docket might be. It is most likely
7 that we will deliberate and make a decision whether to
8 approve or deny the Applicant's request to approve the
9 Agreement with the Town of Groton.

10 So, I would now ask the Applicant,
11 through counsel, to provide a summary of its request as it
12 applies to its motion to approve its Agreement with the
13 Town of Groton, and provide any other information you feel
14 we should have.

15 MS. GEIGER: Thank you, Mr. Chairman.
16 Groton Wind respectfully asks that the Motion to Amend its
17 Agreement with the Town of Groton Agreement be granted.
18 This amendment to the original Agreement is directly
19 related to the issue of winter road maintenance, which was
20 one of the original complaints that was filed in this
21 docket by the Town of Rumney.

22 Public Counsel initially objected to the
23 Motion to Amend, but that objection has been withdrawn.
24 The Buttolph, Lewis and Spring Group of intervenors also

1 objected to the Motion, but that objection has also been
2 withdrawn. Mr. Watson did not object to this Motion. So,
3 as far as we can tell, the Motion to Amend the Agreement
4 with the Town of Groton remains unopposed.

5 In addition, the Town of Rumney, which
6 was the originally complaining party on this issue, sent
7 an e-mail on April 30th, 2014, that we filed with this
8 Committee on June 12th of last year. And, in that e-mail,
9 the Town of Rumney indicated that it had no outstanding
10 issues with Groton Wind at this time. Groton -- the Town
11 of Rumney has presented no prefiled testimony in support
12 of its claims. So, again, we have no basis to believe
13 that the Motion to Amend is opposed.

14 The amendment reflects a revised
15 agreement between the host community, in this case, the
16 Town of Groton, and Groton Wind, regarding road
17 maintenance during winter months. It indicates that
18 "Groton Wind shall not be required to plow or sand Project
19 roads." And, during periods when roads are snow-covered
20 or otherwise impassable or unsafe for use by emergency
21 response vehicles, the amendment outlines steps to be
22 taken by Groton Wind to provide access to emergency
23 responders.

24 First, Groton Wind employees or agents

1 are to make arrangements to meet emergency responders at
2 an appropriate location, and will provide transportation
3 for those first responders by all-terrain vehicles,
4 snowcats, or other vehicles, as Groton Wind and the Town
5 of Groton deem appropriate. I guess that's, in a
6 nutshell, what the amendment does.

7 What I would specifically note and
8 request, with respect to the Motion that we filed, is that
9 the Committee, if it so chooses to approve the amendment,
10 approve the document that's appended to the Motion, rather
11 than the language that I excerpted in the body of the
12 Motion. The excerpt is missing some words. And, I
13 apologize for the oversight. They were inadvertently
14 omitted. So, with respect to the action that Groton Wind
15 is asking the Committee to take, we would ask that you
16 approve the amendment language that is attached as
17 "Attachment B" to the Motion to Amend.

18 And, we respectfully submit that it
19 resolves the original issue regarding road maintenance, to
20 the satisfaction of the Town of Groton, and, because it is
21 unopposed, we believe to the satisfaction of everyone.
22 Thank you.

23 CHAIRMAN BURACK: Thank you, Attorney
24 Geiger. Attorney Roth.

1 MR. ROTH: I have no objection to this
2 Motion.

3 CHAIRMAN BURACK: Mr. Watson.

4 MR. WATSON: Thank you. The Alteration
5 of Terrain Permit, dated October 8, 2010, and approved by
6 New Hampshire DES, and put in the Certificate of Site and
7 Facility, references plans dated July 9th, 2010, which
8 show all road grades -- all roads to the Facility no
9 steeper than 12 percent. This is consistent with the
10 engineering criteria for the roads, as summarized in the
11 original Groton Wind, LLC, Application, which proposed
12 road grades have a maximum grade of -- straight road
13 grades have a maximum grade of 12 percent and curved road
14 grades 5 percent.

15 The access roads that were built in the
16 Groton Wind Facility have grades between 12 and 15
17 percent. This is not a minor deviation. Groton Wind knew
18 prior to and throughout construction that the revised road
19 profiles would not conform to the Certificate, and that
20 the roads would not allow for year-round emergency
21 service.

22 This disregard for the Certificate of
23 Site and Facility has resulted in the Environmental Health
24 and Safety Plan and the agreement with the Town of Groton

1 having to be amended. But the most alarming aspect of
2 this action was the disrespect for the safety of the
3 citizens in the area.

4 The original Agreement between Groton
5 Wind and the Town of Groton states, in Section 8.2,
6 Project roads be "constructed and maintained to allow for
7 year-round access to each wind turbine at a level that
8 permits passage and turnaround of emergency response
9 vehicles." Groton Wind has replaced the condition set
10 forth in the Site -- in the Certificate of Site and
11 Facility at its own discretion with a couple of snowcats.
12 This is a violation of RSA 162-H:4, I, Subsection (d),
13 which states "The Committee shall: Enforce the terms and
14 conditions of any certificate issued under this chapter."

15 That's all I have for now.

16 CHAIRMAN BURACK: Thank you very much,
17 Mr. Watson.

18 Are there questions now from the
19 Committee for any of the Parties? Director Bailey.

20 DIRECTOR BAILEY: Mr. Watson, could you
21 point out to me where in the record that you got the "12
22 to 15 percent" figure?

23 MR. WATSON: That is on a memo -- it's
24 an e-mail written by Mr. Michael Leo, from VHB.

1 DIRECTOR BAILEY: Is that a "B"?

2 MR. WATSON: And, I have a copy of it
3 here, if you'd like to read it. But it basically advises
4 Groton Wind to use snowcats. And, then, Groton Wind, at
5 their discretion, decided to use snowcats, without getting
6 any approval from --

7 DIRECTOR BAILEY: I understand that
8 point. But does that prove that they built the roads at
9 15 percent? That's what I'm --

10 MR. WATSON: They said they did.

11 DIRECTOR BAILEY: Who said?

12 MR. WATSON: VHB.

13 CHAIRMAN BURACK: And, is that -- is
14 that specifically stated in that memorandum that you are
15 referring to, or that e-mail?

16 MR. WATSON: "Plowing roads" --

17 (Court reporter interruption.)

18 CHAIRMAN BURACK: And, let me just first
19 ask you, Mr. Watson, is there a date on that document?

20 MR. WATSON: This is dated March 22nd,
21 2013. And, it's sent to Iberdrola Renewables, Mr. Emmett
22 Smith [Doren Emmett?]. And, it's signed by Michael J.
23 Leo. It's copied to Mr. Peter Walker, Ryan Haley, and
24 Jebby -- I don't know how to say the last name. But it

1 is -- it says the roads were built "up to 15 percent
2 grades would be unsafe". It goes on to explain how,
3 during construction, they were having problems with
4 sanding and getting their construction vehicles up the
5 roads.

6 Do you need any more information?

7 DIRECTOR BAILEY: How did you obtain
8 that e-mail, because I can't find it in the record?

9 MR. WATSON: I'm not sure. It's been on
10 the docket for quite a while.

11 CHAIRMAN BURACK: Attorney Geiger, do
12 you have any information as to the source of this, of this
13 e-mail? Or, do you know whether -- whether and where this
14 is found within the record?

15 MS. GEIGER: Just a moment please.

16 (Atty. Geiger conferring with
17 Mr. Walker.)

18 MS. GEIGER: I'm sorry, Mr. Chairman.
19 We can't put our hands on it right now. But, as a matter
20 of process, if I might add, I think what you have before
21 you is a Motion to Amend the Certificate to reflect a
22 modified agreement with the Town. I think I'm hearing
23 Mr. Watson, even though he didn't file a written objection
24 to this Motion, I think I'm hearing for the first time

1 that he's raising enforcement issues with you. And, I
2 would respectfully remind the Committee and all the
3 Parties that there was a procedural order in this docket
4 issued July 7th, 2014, that said that "Counsel for the
5 Public and any party seeking suspension or revocation or
6 enforcement of the Certificate shall file their prefiled
7 testimony by July 30th, 2014." The only Parties that
8 prefiled testimony were Buttolph, Lewis, and Spring, and
9 they have withdrawn that.

10 So, I think that it's improper, as a
11 procedural matter and as a fairness issue, for Mr. Watson
12 to be offering testimony that should have been prefiled.
13 If he wants -- if he wanted to pursue enforcement claims
14 against Groton Wind, then it was incumbent upon him to
15 prefile testimony. His failure to do that, I would
16 submit, constitutes a waiver of his ability to proceed
17 with any enforcement claim against Groton Wind.

18 CHAIRMAN BURACK: Thank you for sharing
19 that with us. I'm just going to take a moment here off
20 the record. Sorry. Commissioner Honigberg, you have a
21 question?

22 VICE CHAIRMAN HONIGBERG: I have a
23 question for Attorney Geiger. I may agree with you. In
24 fact, I probably do agree with the point you just made.

1 Is it disputed that there were roads at a steeper grade?

2 MS. GEIGER: Could I defer to Mr.
3 Walker? He is familiar with the plans. I am not
4 personally familiar with them to any great degree, other
5 than what's been submitted. So, could I just defer that
6 question to him? Or, I could --

7 CHAIRMAN BURACK: I'm trying to
8 determine whether or not this is a necessary place for us
9 to go, because I'm certainly prepared to rule at this time
10 that the objection that's been raised by Mr. Watson is
11 effectively -- it's past the time at which it could and
12 should appropriately have been raised with the Committee.
13 So, I think the Committee has before it the full record
14 for it to address and decide this matter.

15 If others feel differently, certainly
16 say so. But I think that's appropriately where we are,
17 from a procedural standpoint. And, so, I would invite the
18 Committee at this time to have a discussion regarding
19 the -- regarding this motion, and see if -- regarding,
20 yes, well, the Applicant's request, and determine whether
21 or not we'd like to make a motion or take other action
22 with respect to it.

23 DIRECTOR BAILEY: So, Mr. Chairman, is
24 it your position that we have an unopposed motion, and,

1 therefore, we should just deal with it?

2 CHAIRMAN BURACK: I believe that's
3 procedurally where we are at this --

4 DIRECTOR BAILEY: Okay.

5 CHAIRMAN BURACK: -- at this moment.

6 DIRECTOR BAILEY: Thank you.

7 CHAIRMAN BURACK: Would anyone like to
8 discuss this or make a motion with respect to this?

9 DIRECTOR HATFIELD: Mr. Chairman?

10 CHAIRMAN BURACK: Yes. I have a
11 question that maybe Attorney Iacopino can help us with.
12 I'm looking at Attachment B, which Attorney Geiger
13 referred to. It's Attachment B to the Settlement.

14 MR. IACOPINO: With the Town of Groton.

15 DIRECTOR HATFIELD: With the Town of
16 Groton, yes. Thank you. So, it's dated April 14th, 2014.
17 And, in -- sorry, bear with me. In Attachment B, it
18 references "Section 8.2.1" of the Agreement, and then it
19 inserts new language, and that language doesn't include
20 the grades of the road.

21 But, going to Director Bailey's
22 question, are the grades for the roads specified in the
23 original Certificate?

24 MR. IACOPINO: There were plans that

1 were filed with the Application, which were approved. I
2 have been unable to find anything specific in the revised
3 plans, which is what was ultimately built, and the
4 comparison, you have both of those in the record as well.
5 There were revised plans and a comparison plan that were
6 filed. Not being an engineer, I have not been able to
7 find anything in there indicating that the roads were any
8 different than what they were originally proposed to be.

9 Now, I don't know whether that's
10 12 percent, 15 percent. I do know that those numbers have
11 been bandied around in some of the pleadings. But, as far
12 as whether there is an actual 15 percent grade road within
13 the Facility, and whether that 15 percent grade stretch of
14 road is consistent or inconsistent with the original
15 plans, I can't tell.

16 So, that would be the only way that I
17 can answer your question. And, so, that's it.

18 COMMISSIONER SCOTT: Perhaps I can add
19 to this. So, I'm not clear either that we have exactly in
20 our Certificate a "12 percent" requirement. But it is, I
21 think, undisputed, perhaps Attorney Geiger can tell me,
22 that the original Certificate has language that would
23 require the Facility to allow year-round access to each
24 wind turbine for passage and turnaround of emergency

1 response vehicles. And, that I don't think is in dispute,
2 is that correct?

3 MS. GEIGER: That's correct,
4 Commissioner Scott. That's why we're here with this
5 Motion to Amend. We need to amend that original
6 Certificate condition, so that it can reflect modified
7 language with the Town of Groton indicating that during
8 the winter months something different than that will
9 occur.

10 COMMISSIONER SCOTT: Thank you.

11 CHAIRMAN BURACK: Director Bailey.

12 DIRECTOR BAILEY: And, it seems that the
13 Town of Groton has concluded that the snowcat access is --
14 at least is acceptable or perhaps more acceptable, because
15 they agreed that that would work. I assume that there are
16 training sessions for the Town emergency response people
17 that are in place and will happen routinely?

18 CHAIRMAN BURACK: Is that correct,
19 Attorney Geiger?

20 MS. GEIGER: Yes. That's correct. And,
21 training, I believe, is reflected in both the agreements
22 with the Town of Groton and the Town of Rumney, which are
23 Certificate conditions.

24 DIRECTOR BAILEY: Thank you.

1 CHAIRMAN BURACK: Director Scott --
2 Commissioner Scott, I'm sorry.

3 COMMISSIONER SCOTT: Thank you. One
4 more question for the Applicant, or at one point the
5 Applicant. So, even within that solution with the
6 snowcats, I assume this is correct, is there any time of
7 the year, between snow, ice, and summer conditions, where
8 a snowcat is not sufficient?

9 MS. GEIGER: Based on my client's
10 information, they're not aware of that circumstance.

11 COMMISSIONER SCOTT: So, stated another
12 way, if we were to approve of that change, then there
13 would be year-round access?

14 MS. GEIGER: Yes.

15 COMMISSIONER SCOTT: Thank you.

16 CHAIRMAN BURACK: Commissioner
17 Honigberg.

18 VICE CHAIRMAN HONIGBERG: Mr. Chairman,
19 I'm going to make a motion to approve the Settlement. I
20 think, based on the record, and what we've just gone
21 through, that the record would support a finding that the
22 plowing and sanding of roads at the altitudes and road
23 grades existing at the Facility would be unsafe, and
24 increase spring melt-off and would at times be

1 counterproductive. I think the record would support a
2 finding that the Applicant and the Town of Groton have
3 struck the correct balance in making sure that the
4 Facility is safe for both employees and first responders.
5 I think the record would support a finding that the use of
6 all-terrain vehicles and snowcats to transport first
7 responders, when the roads are not passable, is a adequate
8 method of transportation to ensure access. I also think
9 that the record would support a finding that amending the
10 Certificate to reflect the Agreement would make the
11 Facility safer. And, that this Agreement does not
12 undermine any of the original findings made by the
13 Committee under its statutory obligation.

14 I think, to the extent that an objection
15 has been lodged here for the first time, that objection is
16 untimely. If we were to consider it, I think the
17 Agreement by the Town of Groton probably supersedes any
18 one individual's right to make that challenge. But that's
19 not an issue we need to resolve, because I think,
20 substantively, the Agreement is supported by the record.

21 CHAIRMAN BURACK: Thank you. So,
22 Commissioner Honigberg has made a motion to approve the
23 Applicant's Agreement with the Town of Groton and to amend
24 the Certificate so that it incorporates this Agreement.

1 Is there a second to that motion?

2 DIRECTOR BAILEY: I'll second.

3 CHAIRMAN BURACK: Second by Director
4 Bailey. Is there further discussion?

5 VICE CHAIRMAN HONIGBERG: And, to the
6 extent that it's not clear, it is the language, as
7 Attorney Geiger stated, that's in the attachment, not
8 specifically the language that was in the Motion, that
9 we're looking for here.

10 CHAIRMAN BURACK: So, it's the language
11 in the Agreement itself that we would be approving, and
12 then incorporating into the Certificate as amended
13 provisions of the Certificate.

14 Is there further discussion of this
15 motion?

16 (No verbal response)

17 CHAIRMAN BURACK: Seeing none, all in
18 favor say "aye"?

19 (Multiple members indicating "aye".)

20 CHAIRMAN BURACK: Any opposed?

21 (No verbal response)

22 CHAIRMAN BURACK: Any abstentions?

23 (No verbal response)

24 CHAIRMAN BURACK: Thank you. That

1 motion is approved unanimously.

2 And, let us turn now to the next issue,
3 which is the Compliance Agreement between the Fire Marshal
4 and the Applicant. I will allow the Fire Marshal to make
5 a presentation regarding the Compliance Agreement. The
6 Applicant may then make a short presentation to the
7 Committee as to the status of its compliance with the
8 Compliance Agreement, and its position relating to the
9 Compliance Agreement. When the Applicant's presentation
10 is complete, we will allow Counsel for the Public to state
11 his position. Then, we will allow Mr. Watson to present
12 his position. Thereafter, we will open the floor to
13 Committee questions. Those questions may be answered by
14 the Applicant or any other party to the proceeding that
15 may be present today.

16 And, once we have addressed all issues
17 related to the Compliance Agreement between the Applicant
18 and the Fire Marshal, we will most likely deliberate and
19 make a decision as to what step or steps related to the
20 Compliance Agreement should be taken in this docket.

21 So, let me now turn to Attorney Martin.

22 MS. MARTIN: Thank you, Mr. Chairman.
23 The Office of the Fire Marshal filed both a copy of the
24 Compliance Agreement when it was reached and an update as

1 to compliance back in June of 2014. And, at that point,
2 there were a few items that remained outstanding. In the
3 interim, between then and the October filing, the Groton
4 Wind came into compliance with all of the requirements of
5 the Compliance Agreement. I did check in with my client
6 before this hearing today, and they indicated that
7 compliance has continued, and that the trainings that were
8 contemplated have been held, and that they have no ongoing
9 concerns at this point.

10 CHAIRMAN BURACK: Thank you. So,
11 accordingly, you are continuing to request that the
12 Committee approve this Agreement, is that correct?

13 MS. MARTIN: We hadn't actually
14 requested approval, but it's for your information. To the
15 extent that the Fire Marshal's original pleadings were
16 construed as "motions to suspend", the Fire Marshal does
17 not seek suspension of the Certificate or any action on
18 the Certificate related to compliance at this point.

19 CHAIRMAN BURACK: Thank you. All right.
20 Let me turn then to the counsel for the Applicant.

21 MS. GEIGER: Yes. Thank you, Mr.
22 Chairman. We believe that the Compliance Agreement with
23 the State Fire Marshal fully resolves not just the State
24 Fire Marshal's claims, but any and all claims as they

1 relate to fire and safety issues and Building Code issues
2 with respect to this Project.

3 We, therefore, would respectfully
4 recommend that the Committee approve the Compliance
5 Agreement as fully resolving all of those issues. Thank
6 you.

7 CHAIRMAN BURACK: Thank you. Counsel
8 for the Public.

9 MR. ROTH: Thank you. The fact that the
10 Fire Marshal's Office is satisfied with the compliance was
11 an very important issue for Counsel for the Public. This
12 was an area that was deeply concerning, especially since
13 among the things the Fire Marshal brought up was an
14 allegation of misrepresentation by the Applicant's witness
15 here in front of the Committee.

16 Those issues have been resolved. And,
17 I'm very happy that they have been resolved. And, that
18 the Fire Marshal is satisfied with the compliance of the
19 Facility. And, I believe that, as a result of the Fire
20 Marshal's involvement, the Facility and its employees and
21 the general public are safer because of it. Thank you.

22 CHAIRMAN BURACK: Thank you very much.
23 Mr. Watson.

24 MR. WATSON: Yes. I'd like to thank the

1 Fire Marshal's Office very much for ensuring that this
2 corrective action was taken, that it was much needed.
3 And, once again, I'm in complete agreement with everything
4 they have done. Thank you.

5 CHAIRMAN BURACK: Very good. Thank you
6 very much. Are there any questions for any of the Parties
7 here regarding this matter? Attorney Iacopino.

8 MR. IACOPINO: Thank you. And, these
9 are generally for the Applicant. And, really, what my
10 question is is, as part of your Compliance Agreement with
11 the Fire Marshal, you filed an Emergency Plan. And,
12 that's what it's designated as, "Emergency Plan".

13 MS. GEIGER: Right.

14 MR. IACOPINO: That does not have within
15 it provisions for the transportation of first responders,
16 when the roads are impassable, by all-terrain vehicles.
17 However, you also have the Environmental Health and Safety
18 Plan, which does have a provision at Section 3.6.4. Is my
19 understanding correct that you're asking the Committee to
20 approve both Plans, and that one was not meant to
21 substitute for the other?

22 MS. GEIGER: Yes. That's correct. If
23 the Committee wishes to approve them and adopt them,
24 that's fine. We filed them just to let the Committee know

1 that we believe that they have -- those two documents
2 taken together, along with the State Fire Marshal's
3 Compliance Agreement, should put to rest and resolve all
4 of the safety concerns that led to the opening of this
5 docket.

6 But, yes. I think, just to be clear,
7 the Emergency Plan does not supersede the Environmental
8 Health and Safety Plan. They're to be read together.

9 MR. IACOPINO: Well, my concern is that
10 there remains a plan for the benefits of the employees at
11 the site, so that they know that, when first responders
12 appear, and if the roads are impassable, they are required
13 to activate the snowcats and the all-terrain vehicles and
14 get the responders up there.

15 MS. GEIGER: Yes.

16 MR. IACOPINO: My second question has to
17 do with the onboard fire suppression systems. And, I
18 just -- it's not a real important question, but is this
19 the only facility in the country where your client has
20 installed these systems?

21 MS. GEIGER: Yes.

22 MR. IACOPINO: And, how many -- how many
23 total wind projects does your client have?

24 MS. GEIGER: There are -- Iberdrola is

1 owner of 55 wind projects in the United States.

2 MR. IACOPINO: Thank you.

3 MS. MARTIN: If I might just add
4 something in response to your first question? The Fire
5 Marshal's Office did consider both of those plans in
6 reviewing compliance, and also the existence of the fire
7 suppression. So, all three of those things were taken
8 into consideration jointly.

9 CHAIRMAN BURACK: Thank you. Any other
10 questions for any of the Parties?

11 (No verbal response)

12 CHAIRMAN BURACK: Seeing none, would a
13 Committee member either like to offer a motion or offer
14 observations or findings regarding what we've heard here
15 on this particular item? Director Bailey.

16 DIRECTOR BAILEY: Mr. Chairman, having
17 considered the issue, I note the following: The purpose
18 of the Compliance Agreement is to protect public health
19 and safety. Such an objective is in direct compliance
20 with the Committee's statutory goals and purposes. By
21 approving the Compliance Agreement and incorporating its
22 provisions in the Certificate, we will ensure that the
23 Project was constructed and it is operated in compliance
24 with Building and Fire Codes. The actions of the

1 Applicant in coming into compliance under this Agreement
2 makes the Facility more safe, because it has resulted in
3 the installation of onboard fire suppression systems in
4 each turbine.

5 The Compliance Agreement includes a
6 comprehensive emergency plan. It does not alter our
7 initial statutory finding and provides additional
8 protection for the public health and safety.

9 So, having heard the discussion, and
10 after reviewing the Compliance Agreement, together with
11 the Fire Marshal's updates on the status of the
12 Applicant's compliance with the Compliance Agreement, I
13 move to approve the Compliance Agreement and amend the
14 Certificate so that it incorporates the Compliance
15 Agreement between the Applicant and the Office of Fire
16 Marshal. And, to the extent necessary, if that needs to
17 include our approval and adoption of the Emergency Plan
18 and the Environmental Health and Safety Plan, I would do
19 that as well.

20 CHAIRMAN BURACK: Very good. So, you
21 are effectively moving approval of those two plans, and as
22 really amendments to the Certificate, so that the -- as
23 well as the approval of the Compliance Agreement.

24 DIRECTOR BAILEY: Yes.

1 CHAIRMAN BURACK: So that the Compliance
2 Agreement, plus those two plans, effectively, all three of
3 them are being approved and also incorporated as
4 amendments to the Certificate, is that correct? Is that
5 what you're proposing?

6 DIRECTOR BAILEY: That's correct.

7 CHAIRMAN BURACK: Okay.

8 (Chairman Burack and Atty. Iacopino
9 conferring.)

10 CHAIRMAN BURACK: Attorney Iacopino has
11 pointed out that we have been talking here about the --
12 specifically about the Fire Safety Plan here. We have not
13 had any discussion about the Environmental Health and
14 Safety Plan directly. There was an objection, I believe
15 timely filed, by Mr. Watson related to the Environmental
16 Health and Safety Plan. We have not discussed that matter
17 at all. And, perhaps we will now hear that, and then come
18 back to your motion. Nobody seconded your motion at this
19 point.

20 DIRECTOR HATFIELD: I will second the
21 motion.

22 CHAIRMAN BURACK: You will second the
23 motion? Okay. I'm thinking, though, before we take a
24 vote, that it may be helpful just to hear positions of the

1 Parties relating to approval -- specifically approval of
2 the Environmental Health and Safety Plan. Is that --

3 DIRECTOR BAILEY: Or, I could amend my
4 motion to exclude the Environmental Health and Safety
5 Plan, and we can that up as a separate matter?

6 CHAIRMAN BURACK: Would you like to do
7 that?

8 DIRECTOR BAILEY: I would like to do
9 that.

10 CHAIRMAN BURACK: Okay. Would --

11 DIRECTOR HATFIELD: I would second the
12 amended motion.

13 CHAIRMAN BURACK: Very good. Okay.
14 Thank you. So, let's now have further discussion and
15 consideration of the motion, which is to approve the
16 Compliance Agreement and the Fire Safety Plan, and to
17 incorporate both of those into the Certificate.

18 Is there further discussion of that
19 motion?

20 (No verbal response)

21 CHAIRMAN BURACK: Seeing none, is
22 there -- all those in favor, please say "aye"?

23 (Multiple members indicating "aye".)

24 CHAIRMAN BURACK: Any opposed?

1 (No verbal response)

2 CHAIRMAN BURACK: Any abstentions?

3 (No verbal response)

4 CHAIRMAN BURACK: Okay. Thank you. So
5 that motion is approved.

6 Let's turn then to the issue of the
7 approval of the Environmental Health and Safety Plan and
8 the incorporation of that into the Certificate. Attorney
9 Geiger, would you like to discuss this matter first, and
10 help us understand what this plan covers?

11 MS. GEIGER: Sure. Just a little
12 background information. The Town of Rumney had originally
13 filed the letter expressing concerns about road
14 maintenance during the winter and related fire and safety
15 issues. And, earlier in this docket, Groton Wind
16 representatives met with a number of first responders on
17 several occasions, from the Towns of Rumney, Groton,
18 Hebron, and I think some other municipalities, to discuss
19 all of these issues. And, in an attempt to address those
20 concerns on the part of the first responders, Groton Wind
21 developed and filed the Environmental Health and Safety
22 Plan, and that was filed on October 11th, 2013.

23 Mr. Watson has filed an objection in
24 November of 2013. And, I believe that he's indicated that

1 he thinks that that Plan is insufficient. Our position,
2 as we've indicated with respect to support for the
3 Compliance Agreement, is that the Plan should be
4 acceptable to the Committee. Arguably, it's moot, in
5 light of the Compliance Agreement, but we believe that
6 it's appropriate for the Committee to consider it and
7 accept it nonetheless.

8 Although Mr. Watson objected to the
9 Environmental Health and Safety Plan, his fire and safety
10 claims are indistinguishable from those of the State Fire
11 Marshal or the general public, and those have been
12 resolved by the Compliance Agreement pursuant to the vote
13 that the Committee just took.

14 So, we believe that Mr. Watson can't
15 maintain his objections to his claims, moreover he did not
16 prefile any testimony on those claims, a point that I've
17 indicated earlier. So, we believe that his objections
18 notwithstanding, he cannot maintain them.

19 We'd also note that the Town of Rumney
20 has indicated that it does not have any further issue in
21 this docket. We referred earlier you to the e-mail that
22 Attorney Waugh submitted. He's the Town of Rumney's
23 counsel in this docket.

24 And, therefore, in view of all of that,

1 we believe that the Environmental Health and Safety Plan
2 should be adopted and agreed.

3 CHAIRMAN BURACK: Thank you. I'll turn
4 to Counsel for the Public now.

5 MR. ROTH: Thank you, Mr. Chairman. I
6 don't have any objection to this. I simply have -- I have
7 a question, and perhaps it's a draftsmanship thing, I
8 just -- there's something in it I don't understand.

9 In Section 3.6.2 of the Environmental
10 Health and Safety Plan, it says "The Iberdrola employee
11 may, if appropriate, escort emergency services to the
12 location they are needed." And, what I don't understand
13 about that is, if this gives the discretion to an
14 Iberdrola employee to deny emergency first responders'
15 access to the location where they're needed, and why this
16 isn't expressed in a more certain fashion?

17 And, maybe there's a good reason for it,
18 but -- and it's been discussed. I just don't understand
19 this.

20 CHAIRMAN BURACK: And, again, this is in
21 Section 3.6.2 of the Agreement, is that correct?

22 MR. ROTH: Of the Environmental Health
23 and Safety Plan.

24 CHAIRMAN BURACK: Thank you. Attorney

1 Geiger, do you have a response?

2 MS. GEIGER: Yes. My client has
3 informed me that the language here may be inartful. It
4 was never intended to give the Iberdrola employee the sole
5 discretion to deny a responder access to the Facility. I
6 think that the intent is that the words "if appropriate",
7 it may be that the first responder may not need escort,
8 they may know where the emergency is. I think the words
9 "if appropriate" are meant to qualify or describe the
10 situation where the first responder may not need
11 assistance from the Iberdrola employee, and, therefore, it
12 may not be appropriate for them to direct the escort --
13 or, escort emergency services to the location. It may be
14 that the emergency services can proceed there on their
15 own.

16 CHAIRMAN BURACK: Thank you. One could
17 also imagine, I suppose, a circumstance where emergency
18 services were coming by helicopter, for example. And,
19 under those circumstances, it probably wouldn't be
20 appropriate for that to have to occur. That's one
21 circumstance, I guess, I could imagine there.

22 Commissioner Honigberg.

23 VICE CHAIRMAN HONIGBERG: Can I follow
24 up with Attorney Geiger? I believe the other aspect of

1 the sentence that might be read to be "permissive" was the
2 use of the word "may", "may, if appropriate". That I
3 think would be the place where I think Attorney Roth might
4 be looking for assurance that the employees haven't been
5 given discretion.

6 MR. ROTH: I mean, if I were writing
7 this, I would say "shall, when requested", instead of
8 "may, if appropriate".

9 MS. GEIGER: Yes. Iberdrola would agree
10 to that change. I mean, obviously, the intent here is to
11 cooperate with first responders. And, if that language
12 would give the public, you know, more and this Committee
13 more comfort, we would agree to that.

14 MR. ROTH: Thank you. I'm not trying to
15 be picky. It just looked a little strange to me.

16 CHAIRMAN BURACK: Thank you for raising
17 that.

18 MR. IACOPINO: Mr. Chairman, I would
19 also point out that Section 3.6.4 does say "If the roads
20 at the plant are impassable as a result of inclement
21 weather, the Iberdrola employee will provide
22 transportation for emergency services personnel in an
23 all-terrain vehicle." Just I guess it adds to the comfort
24 level.

1 MS. GEIGER: Right. I think you have to
2 keep in mind, this docket was drafted, I guess the date on
3 it is "June 18, 2013". It was submitted sometime after
4 that. After that, we had the Emergency Plan developed,
5 and then the Town of Groton Agreement. And, so, things
6 sort of -- the various documents, they're all intended to
7 accomplish the same thing, is to provide a safe way for
8 emergency responders to access and get to locations within
9 the site where they're needed. We certainly don't want
10 language out there that makes it appear as though
11 employees are not going to escort or provide, you know,
12 cooperation or assistance when it's needed.

13 So, if the Committee requires an
14 amendment, we'd be happy to do that. Or, if the Committee
15 simply wants to note for the record what I just stated,
16 that would be fine with us, too.

17 MR. IACOPINO: Just for purposes of the
18 record, we're specifically addressing Page 4 of 12 on the
19 Groton Wind Environmental Health and Safety Plan, Revision
20 002.

21 CHAIRMAN BURACK: Okay. Thank you.
22 Mr. Watson.

23 MR. WATSON: Yes. My comments are also
24 centered around Paragraph 3.6.4, states that "Iberdrola

1 will transport the services" -- "emergency service
2 personnel in all-terrain vehicles when roads are
3 impassable." This provision is necessary because of
4 Groton Wind, LLC's deliberate disregard of the conditions
5 on which the Project was approved.

6 The Alteration of Terrain permit
7 originally approved by New Hampshire DES and in the
8 Certificate of Site and Facility references Project plans
9 "no steeper than 12 percent", as I stated earlier. The
10 roads built have sections at 15 percent. There's no
11 evidence on the record that Groton Wind, LLC, notified the
12 Committee, Counsel to the Public or the Parties or other
13 proceeding parties, the Towns of Groton or Rumney, to the
14 changes in road profiles prior to construction.

15 The VHB letter to New Hampshire DES that
16 explains plan revisions, including relocation of the O&M
17 building and two turbines, omitted any reference to road
18 profile changes. This is proven significant, and it has
19 result in the inability of Groton Wind to adhere to
20 Section 8.2 that I covered area -- earlier.

21 As I stated in my Petition for
22 Intervention, I am very concerned in the event of a fire
23 at the Facility during periods in which roads remain
24 unplowed and inaccessible to firefighting equipment.

1 Despite the turbines being equipped with fire suppression,
2 the risk remains and have not been addressed. Thank you.

3 CHAIRMAN BURACK: Thank you very much,
4 Mr. Watson.

5 Attorney Martin, do you have anything
6 you wish to share on this item?

7 MS. MARTIN: I think I agree with
8 Counsel for the Public's change, if everyone is in
9 agreement, as it will clarify a question that perhaps
10 won't need to be clarified in the future. Other than
11 that, no other comment.

12 CHAIRMAN BURACK: Thank you. Are there
13 any other questions for any of the Parties here?

14 DIRECTOR HATFIELD: Mr. Chairman?

15 CHAIRMAN BURACK: Yes, Director
16 Hatfield.

17 DIRECTOR HATFIELD: Thank you.
18 Mr. Iacopino, just to reiterate something you said
19 previously, that you're not aware that there is a
20 requirement within the Certificate that the Company has
21 maintained a road grade of 12 percent, is that correct?

22 MR. IACOPINO: That's correct.

23 DIRECTOR HATFIELD: Thank you.

24 CHAIRMAN BURACK: Okay. Would anyone

1 like to discuss this matter or make a motion?

2 Commissioner Scott.

3 COMMISSIONER SCOTT: I move we approve
4 the Environmental Health and Safety Plan as filed by the
5 Applicant, and as amended on Page 4 of 12, Revision 002,
6 Section 3.6.2, to read "The Iberdrola employee shall, if
7 requested, escort emergency service to the location that
8 they are needed." And, with that amendment, that we amend
9 the Certificate to incorporate that Plan.

10 CHAIRMAN BURACK: Thank you. Is there a
11 second of that motion?

12 DIRECTOR SIMPKINS: I'll second.

13 CHAIRMAN BURACK: Second by Director
14 Simpkins. All right. Let's have some discussion please?

15 (Chairman Burack conferring with Atty.
16 Iacopino.)

17 CHAIRMAN BURACK: One thing that
18 Attorney Iacopino just reminded me of is that we have
19 effectively already approved this Agreement in the
20 Agreement with the Town of Groton, because this document
21 is effectively incorporated into the Agreement between the
22 Applicant and the Town of Groton.

23 So, what we'd be doing here is, in fact,
24 I suppose, effectively, affirming and confirming that that

1 was, you know, our intention was, in approving it there,
2 we were expecting it to be specifically incorporated into
3 the Certificate, to revise the earlier Health and Safety
4 Plan.

5 Commissioner Scott, would like to speak
6 to his motion. Go ahead.

7 COMMISSIONER SCOTT: To the extent we
8 still need to approve this, I would again remind that
9 this -- this Environmental Health and Safety Plan does
10 meet the original goals of our Certificate. And, I think,
11 from our testimony we've heard, it actually enhances the
12 intent of our requirements under 362-H.

13 CHAIRMAN BURACK: When you say "362-H",
14 you mean "162-H"?

15 COMMISSIONER SCOTT: I'm sorry, 162-H.
16 Wrong proceeding.

17 CHAIRMAN BURACK: Thank you. I will
18 just offer the observation, having spent some time looking
19 at the Health and Safety Plan, that it includes a number
20 of elements that are important. One is a Hazard
21 Communication Program that governs actions and
22 communications to be undertaken, if any of various hazards
23 are, in fact, found at the Facility.

24 It includes an Emergency Response Plan

1 that outlines the immediate and supplementary actions that
2 personnel would need to take in the event of an emergency
3 at the Facility, including how to react to emergencies in
4 snow and winter weather.

5 There's also an emergency protocol for
6 blade icing and ice shedding from the turbines, as well as
7 fire prevention protocols, provisions for fall protection
8 and training, as well as a Safety Training Program.

9 So, again, all of those elements are
10 there in this Plan. And, the Plan and the programs that
11 it covers I believe were designed and implemented to
12 ensure public safety, during both the construction, as
13 well as the operation now, of this wind project. And, as
14 we heard earlier, all of this would be in direct
15 compliance with the legislatively established goals of
16 this Committee.

17 So, again, I certainly support this
18 motion. I think it makes sense for us to do this. And I
19 would welcome any other thoughts or comments here. And, I
20 would also offer the observation that nothing in -- by
21 incorporating this Environmental Health and Safety Plan
22 into the Certificate, as revised, we would not, in my
23 view, be doing anything that would undermine any of the
24 Committee's original findings under RSA 162-H, Section 16,

1 of the statute.

2 Are there other thoughts or comments on
3 this?

4 (No verbal response)

5 CHAIRMAN BURACK: Seeing none, are we
6 ready for the motion? All right.

7 All in favor, please signify by saying
8 "aye"?

9 (Multiple members indicating "aye".)

10 CHAIRMAN BURACK: Any opposed?

11 (No verbal response)

12 CHAIRMAN BURACK: Any abstentions?

13 (No verbal response)

14 CHAIRMAN BURACK: All right. Thank you.
15 We have now approved that motion unanimously.

16 I'm going to suggest that we take a
17 break here, of -- can we try to do this in roughly 50
18 minutes, and be back here by 12:45? And, it may end up
19 being a little closer to one before we can be back here,
20 but I'd ask everybody to do their best to be back here by
21 12:45, with the goal of resuming no later than 1:00, so
22 that we can take up the final item that we have before us,
23 which is the Applicant's Motion to Amend the Certificate.

24 MR. ROTH: Mr. Chairman, if I may

1 address that proposal. And, it has to do with the
2 presence of Mr. Pelletier sitting in the back of the room.

3 I noted from the procedural order, and
4 as amended, that it appeared that the intent was to have a
5 final hearing on the Motion to Amend. And, I think, if
6 you were going to have a final hearing and an evidentiary
7 hearing, with Mr. Walker and perhaps Mr. Pelletier as
8 witnesses, it would make sense to adjourn for lunch and be
9 back for the afternoon and spend some time doing that.

10 But I would like to point out that, when
11 we reached -- when we came to our procedural order in
12 January of last year, it was, I think, everybody's
13 understanding that we were going to deal with the Fire
14 Marshal's issues first, and then we were going to address
15 the enforcement issues. And, there was really nothing --
16 there was very little attention paid in a procedure to
17 dealing with the Motion to Amend. That was sort of -- not
18 quite an afterthought, but it was understood that maybe
19 the Motion to Amend wouldn't matter if there was an order
20 to have the building moved, I suppose would be one way to
21 approach it.

22 So, as a result, when the Fire Marshal's
23 issues were resolved and the enforcement issues were
24 resolved, all the procedure that was in place that might

1 have dealt with the Motion to Amend, that is technical
2 sessions, data requests and the like, were foregone.

3 So, as a result, you're facing a final
4 hearing on a motion today that there has not been an
5 opportunity to conduct a technical session or data
6 requests. And that I think, you know, while I could -- I
7 could do a cross-examination of Mr. Walker today, and, if
8 necessary, present Mr. Pelletier, I think it would be
9 better, and this could be done before lunch, is what I'm
10 getting to and that's why I'm raising this point now, if
11 we were to set up a brief procedure, to be resolved
12 sometime in the next month or two, and then come back, if
13 necessary, for a hearing.

14 And, the reason I say that is, because,
15 fundamentally, Counsel for the Public's issues with the
16 Motion to Amend are actually fairly modest. And, I think
17 we could reach another agreement. And, I'm willing to
18 work as hard as I can with the Applicant on reaching an
19 agreement towards allowing the Motion to Amend, and with
20 additional conditions that we might agree upon.

21 And, you know, in light of Attorney
22 Geiger's reminding us of the Administrative Procedure Act
23 emphasis on informal settlements, I think it would make a
24 lot of sense, instead of coming back for a full

1 evidentiary committee -- a full evidentiary hearing, and
2 having Mr. Pelletier spend the rest of the day here, we
3 set up a process to do that and adjourn for the day on
4 that, and come up with another date to come back, if
5 necessary, to have an evidentiary hearing. Which I, in my
6 firmest belief, do not think we will need an evidentiary
7 hearing.

8 However, if we proceed today, we will
9 have an evidentiary hearing, and I'll, you know, I'll go
10 at it. But I'd rather not do that. I think it makes more
11 sense to reach an agreement with Groton Wind. And, all I
12 ask is that we adjourn the final hearing so that we have
13 an opportunity to do that.

14 CHAIRMAN BURACK: Attorney Geiger.

15 MS. GEIGER: Thank you, Mr. Chairman.
16 Mr. Roth's position puts us in an awkward spot. This
17 matter has been pending for over two years. And, my
18 client is very anxious to have it resolved, and was under
19 the impression that we would do so today.

20 At the same time, we want to cooperate
21 with Public Counsel to try to resolve whatever issues he
22 might have. We're not aware of exactly what those are,
23 other than he's indicated that he may be seeking some
24 additional conditions to the Certificate.

1 We're here with Mr. Walker today,
2 because the Committee's order indicated that Mr. Walker
3 would be cross-examined by Public Counsel and Mr. Watson.
4 So, we're prepared to go forward today. I believe that
5 I've also indicated in the memorandum that I filed that we
6 believe the Motion to Amend the Certificate could even be
7 reviewed and approved, hopefully, on the papers.

8 We did submit prefiled testimony back in
9 December of 2013. We believe that that sets out all of
10 the information that the Committee needs to review the
11 revised plans, and hopefully approve them.

12 I'm simply handicapped, in terms of
13 process here, because, to my knowledge, under the
14 Committee's rules and under 162-H, there isn't a clearly
15 designated process, there's no process designated for what
16 to do when a -- in a post certificate modification. I'm
17 just trying to take some hints and clues from other
18 processes that the Committee has employed in other
19 dockets.

20 So, I would really leave it to the
21 Committee to decide what it wants to do, in terms of
22 process. And, we want to work with Public Counsel to
23 reach resolution of the issues. We understand that
24 Mr. Watson still has an objection. So, even if are able

1 to reach agreement with Counsel for the Public, it's not
2 clear whether or not we'd have to come back again for some
3 sort of litigated proceeding due to Mr. Watson's concerns.

4 CHAIRMAN BURACK: Thank you.

5 Mr. Watson, do you have views on this?

6 MR. WATSON: No. I believe this is a
7 Committee decision on whether we go forward or continue
8 later. It's totally your call.

9 CHAIRMAN BURACK: Thank you.

10 Ms. Martin, do you have any views on this?

11 MS. MARTIN: I don't actually have any
12 views on this. I just wanted to let the Committee know
13 that I have to be somewhere else at 1:30. I'm not sure if
14 you have any questions for the Office of the Fire Marshal
15 before I leave, and whether I could be excused and not
16 return for the afternoon session?

17 CHAIRMAN BURACK: I believe it would be
18 the case that your presence would not be required for the
19 afternoon session. As you pointed out earlier, your
20 client has not taken any position with respect to that
21 particular matter. And, so, I'm certainly prepared to
22 excuse you from further participation in this proceeding
23 today. So, thank you.

24 MS. MARTIN: Thank you.

1 CHAIRMAN BURACK: I'm just going to
2 take -- Commissioner Honigberg.

3 VICE CHAIRMAN HONIGBERG: I wonder
4 whether, to accommodate both Mr. Watson's presence and
5 everyone's desire to work together, whether it might make
6 sense to do some informal discovery this afternoon, in
7 lieu of a formal hearing, in the hopes that perhaps
8 Counsel for the Public and the Applicant and the
9 Intervenor could reach a resolution today, or get
10 themselves further along in the process, so that they
11 could do it without the need for anything further formal.

12 But, you're all here, planning on doing
13 something, and maybe that would be a more productive use
14 of everyone's time than having you do it in front of us.

15 CHAIRMAN BURACK: Director Hatfield.

16 DIRECTOR HATFIELD: Thank you, Mr.
17 Chairman. I would support Commissioner Honigberg's
18 suggestion. And, I just wanted to point out something
19 that's in the Company's -- or, the Applicant's Settlement
20 with Public Counsel. In Paragraph 5 of the Settlement,
21 the Parties agreed to a statement that includes language
22 that says that the Project "was not explicitly authorized
23 by the Certificate". And, I raise that, because I think
24 that the Parties got fairly close to resolving this issue

1 in the Settlement on the enforcement matters. And, so, I
2 would strongly encourage that they continue talking, in an
3 effort to avoid a further hearing, but instead to present
4 a potential agreement to the SEC. Thank you.

5 CHAIRMAN BURACK: Just going to take a
6 moment here to confer with counsel.

7 (Chairman Burack conferring with Atty.
8 Iacopino.)

9 CHAIRMAN BURACK: This is what I'd like
10 to do. Because, again, we had planned on a full day of
11 proceedings today, and people have set the time aside on
12 their schedule to be able to try to accomplish this today,
13 so that we could, if possible, fully resolve this matter
14 today. What I'm going to do is I'm going to ask the
15 Parties to take the next hour or so, while you're having
16 lunch, to see what you can do to come to a resolution or
17 as close as possible. And, I would ask you to be prepared
18 to come back, and, if you need a little bit more time,
19 when we get to 1:00, let us know that, and we'll -- we
20 all, I'm certain, can find other things to do with our
21 time while you all are talking with each other. But I
22 would ask you to come back to us at 1:00, or very shortly
23 thereafter, and let us know what you've been able to
24 resolve, if possible. And, then, at that point, we can

1 make a determination as to whether we're going to go
2 forward with an evidentiary proceeding further today or
3 whether we will adjourn the proceeding and come back at a
4 later time, to see if you all have been able to come to a
5 complete agreement.

6 So, that's what I'm going to ask the
7 Parties to do. And, let's plan to, I'm looking at my
8 watch now, it's 12:05, let's plan to get back here, say,
9 at 1:05. Thank you.

10 (Whereupon a lunch recess was taken at
11 12:05 p.m. and the hearing resumed at
12 1:26 p.m.)

13 CHAIRMAN BURACK: Thank you, everyone.
14 We will resume this proceeding now. And, I'd like to turn
15 to the Parties and ask them if they would each report to
16 us on what their discussions have been, since we took a
17 break at about -- well, we broke at 12:05, and it's now
18 1:27. And, let me start with the Applicant, then we'll
19 move to Counsel for the Public and Mr. Watson, and hear
20 your thoughts as to where you are.

21 MS. GEIGER: Thank you, Mr. Chairman.
22 We did have an opportunity to discuss some with both
23 Public Counsel and Mr. Watson on how to proceed for the
24 duration. And, because this matter has been outstanding

1 for now over two years, and since we were relying on the
2 Committee's orders most recently in March and April of
3 this year, we're prepared to go forward this afternoon
4 with Mr. Walker.

5 In the alternative, I mean, we argued in
6 our memoranda that we believe that the Committee could
7 proceed even without witness and cross-examination, but
8 Mr. Watson -- excuse me, Mr. Walker is here and would be
9 available for cross-examination by Public Counsel and by
10 Mr. Watson.

11 Again, we're anxious for a resolution.
12 We also did have a conversation with Committee's counsel
13 to discuss, in the alternative, if the Committee decided
14 it did not want to go forward today, a process for
15 extending the hearing to allow for some further
16 fact-finding or discovery by Counsel for the Public and
17 Mr. Watson, perhaps a technical session, and then resuming
18 the hearing at a later date.

19 But it's really the -- the Applicant's
20 preference is really to go forward today and get this
21 matter resolved.

22 CHAIRMAN BURACK: Thank you. Attorney
23 Roth.

24 MR. ROTH: We had a discussion about

1 some conditions that I would be interested in exploring
2 with Groton Wind. Last year, while we were developing the
3 Settlement Agreement, and one of the things that was
4 placed in the Settlement Agreement was the agreement that
5 Counsel for the Public would be able to participate in the
6 Motion to Amend the Certificate. As I mentioned before,
7 the process that was in place at that time was focused on
8 resolving the Fire Marshal's issues, and on resolving the
9 enforcement issues. And, that the enforcement issues were
10 only going to be necessary -- I'm sorry. The Motion to
11 Amend issues would only be necessary in the event that
12 there would be no resolution of the enforcement issues, if
13 I got that right.

14 What I'm trying to say is, if the
15 enforcement issues resulted in there being the building
16 removed, as was being sought, there would be no reason to
17 have further proceedings about the Motion to Amend. And,
18 thus, where we did not have any certainty or any knowledge
19 about whether the Committee was going to approve the
20 Settlement Agreement, the enforcement issues were still
21 alive until 11:00 this morning, when that motion was
22 approved.

23 So that, during the time that we had a
24 motion pending to resolve the enforcement issues, the

1 Motion to Amend was not addressed. The proceedings, the
2 process that was in place from the Committee, in the
3 Committee's orders of January of last year, were not
4 designed to deal with those issues. So, they were not.
5 There was no technical session of Mr. Walker. There was
6 no data requests. There was no process of any kind about
7 that. We did not bring forth any witnesses. And, I only
8 brought Mr. Pelletier to rebut the idea that somehow DES
9 has the authority to approve these kinds of changes, if
10 that is an issue that they're going to litigate, and,
11 apparently, they are at this point.

12 I was surprised, when the order came
13 last month, suggesting that this was going to be the final
14 hearing on the Motion to Amend the Certificate. There had
15 been no process for it. And, you know, the Parties,
16 myself and Mr. Watson included, had not had a orderly
17 opportunity to prepare for that. Because there would have
18 been no point in dealing with that if we were going to
19 move the building anyway.

20 That said, what I suggest is that we
21 have essentially a month continuance or so, five or six
22 weeks, so that I can continue to work with Groton Wind and
23 Mr. Watson, to see if we can come up with a grand bargain
24 on this. I have some discrete issues that I think

1 possibly could be resolved, or some of them anyway. But,
2 you know, we need to have more opportunity to talk, and we
3 need to exchange a little bit of information about them.
4 And, these things were, you know, it was -- last summer,
5 you know, it was suggested, "well, why don't we talk about
6 these now", and I said "I don't" -- "I'm not prepared to
7 do that yet." And, you know, frankly, I'm not really
8 prepared now either, but I did my best over the lunch
9 break.

10 I think it -- there's no prejudice to
11 Groton Wind to wait another month or so for its hearing,
12 if we can't work things out. Whereas, if we're forced to
13 proceed today, I think there is prejudice to Counsel for
14 the Public and public interest, because there has not been
15 the attention paid in this proceeding to being prepared
16 for that kind of an evidentiary hearing. It just wasn't
17 before us, until 11:00 this morning, when you decided the
18 motion to amend -- or, the motion to approve the
19 Settlement.

20 So, what I suggest is that we have a --
21 and I suggested this in an e-mail to Attorney Geiger a
22 couple of weeks ago, let's have something short and sweet,
23 but let's have a process for dealing with the Motion to
24 Amend, and not just push it through this afternoon without

1 the proper amount of preparation that is usually afforded
2 to a matter like that.

3 CHAIRMAN BURACK: Thank you.

4 Mr. Watson.

5 MR. WATSON: I believe Attorney Roth
6 covered everything. And, I look forward to having an
7 opportunity to have a dialogue with them before we
8 proceed, if the Committee so decides. And, that's the way
9 I would be more comfortable.

10 CHAIRMAN BURACK: Thank you. Are there
11 questions that members of the panel have? Commissioner
12 Scott.

13 COMMISSIONER SCOTT: For the Applicant,
14 if we were to grant the Counsel for the Public's request
15 for this extra month or so, what are the ramifications to
16 your client?

17 MS. GEIGER: Yes, Commissioner Scott.
18 Basically, for the Company, we've been trying to put this
19 matter to rest for several months now. And, so, this
20 would just create another month of delay and uncertainty
21 for the Company. Obviously, both Attorney Nguyen and Ms.
22 Menconi have traveled from Portland, Oregon, they'd have
23 to come back, or other representatives of the Company
24 would have to come back. And, therefore, we just were

1 hoping that we could reach some sort of closure today.

2 COMMISSIONER SCOTT: So, again, other
3 than, obviously, the staffing issues, and I understand
4 there's some expense with that and time, there's no other
5 window of opportunity somehow that will get lost if this
6 goes on another month?

7 MS. GEIGER: I think, if we could get
8 some guarantee that the matter would, in fact, conclude in
9 a month, that would be comforting to the Company. Again,
10 the matter has stretched on. I think the last agreement
11 that we filed was back last summer, sometime in the July
12 or August timeframe. We were hoping to have a hearing
13 then. We understand that the Committee has time
14 constraints on it, and was undergoing a period of some
15 transition there with the new SEC.

16 And, so, really, it's just the matter
17 has been going on now for almost two and a half years.
18 And, so, we'd really like some closure.

19 COMMISSIONER SCOTT: Thank you.

20 CHAIRMAN BURACK: Yes, Commissioner
21 Honigberg.

22 VICE CHAIRMAN HONIGBERG: The question
23 is for Public Counsel and for Mr. Watson. How long do you
24 anticipate you would need to question the witness, if we

1 proceeded today?

2 MR. ROTH: Well, as I've discovered, Mr.
3 Chairman, it all depends on how much he says. And, --

4 VICE CHAIRMAN HONIGBERG: He's got
5 prefiled testimony. So, --

6 MR. ROTH: I have, you know, probably a
7 couple of hours of questions, maybe less. But, you know,
8 it's hard to know, because it depends on how much he says.

9 CHAIRMAN BURACK: Mr. Watson, how long
10 do you think you would take?

11 MR. WATSON: I would approximate 30 to
12 40 minutes.

13 CHAIRMAN BURACK: Other questions?
14 Comments? Thoughts?

15 VICE CHAIRMAN HONIGBERG: I think it's
16 unlikely we would finish today. I think that we have some
17 members of the Committee that need to leave at 3:30,
18 including the Chair today. I think, given the reasonable
19 expectation for how cross-examination would go, even
20 accepting that the Intervenor and the Public Counsel may
21 have been overestimating their ability to go here, I think
22 it's unlikely we'd finish. We wouldn't be able to
23 deliberate today anyway, we're going to need to find
24 another time to get together.

1 My inclination is to stop, and have the
2 Parties set up an abbreviated schedule for resolving or
3 dealing with discovery, and find the earliest date we can
4 in June to get everybody together, for either a hearing on
5 a settlement or a hearing on the merits.

6 CHAIRMAN BURACK: Are there thoughts,
7 reactions to the proposal that we have heard from
8 Commissioner Honigberg?

9 DIRECTOR HATFIELD: Yes, Mr. Chairman.
10 I would support that approach. And, I guess I would
11 encourage the Chairman to request that the Parties propose
12 a schedule in the next day or so, that we could react to
13 or you could react on our behalf promptly. I would agree
14 that it doesn't make sense to start a hearing at this
15 point in the afternoon, especially with the concerns that
16 have been raised.

17 CHAIRMAN BURACK: Other thoughts?
18 Comments?

19 (No verbal response)

20 CHAIRMAN BURACK: I would ask the
21 Parties, when you were meeting, did you discuss any kind
22 of a schedule as to when you think you might be able to
23 come back to us? And, I'm really talking of specific
24 weeks, either late May, early June, looking roughly a

1 month out from now.

2 Because the challenge that we have, and
3 the reason why I have pushed you all as hard as I pushed
4 you today, and asked you to work through the lunch hour
5 and see what you could do, is because it is very
6 challenging to schedule, to be able to get a quorum of
7 this Committee here. And, so, it's going to be important
8 that we have target dates as soon as possible that we'd be
9 looking to have you all back here. Again, either for a
10 final evidentiary hearing, if that's what it takes, or to
11 be able to consider a proposed final resolution for
12 approval.

13 So, do you all need a moment to look at
14 calendars together? And, we'll just take a quick break
15 here while you all talk that through and tell us what
16 dates you'd be looking at, because I'm sensing that that
17 is the general wish of the Committee.

18 MR. ROTH: Could we have two minutes to
19 confer?

20 CHAIRMAN BURACK: Yes. We'll take a
21 break here for a couple minutes. Go ahead, please, and
22 confer.

23 (Off the record for the Parties to
24 confer.)

1 MS. GEIGER: Mr. Chairman, we've had an
2 opportunity to confer. And, both Mr. Watson and Counsel
3 for the Public and the Applicant could come back for a
4 hearing during the first week of June at some point.

5 CHAIRMAN BURACK: Okay.

6 MS. GEIGER: And, then, we had also
7 discussed the possibility of -- or, a potential schedule
8 that would include having Counsel for the Public and
9 Mr. Watson submit to the Applicant I believe a list of
10 proposed conditions or issues. And, then, we would
11 have -- the Applicant would then have -- that filing I
12 think would be made in about a week or so, --

13 MR. ROTH: That's right.

14 MS. GEIGER: -- with the Applicant.
15 And, then, the Applicant would have a week to respond.
16 And, then, there would be a tech session a couple of
17 weeks, two or three weeks after that.

18 MR. IACOPINO: If -- may I?

19 CHAIRMAN BURACK: Yes.

20 MS. GEIGER: How do those dates look?

21 MR. IACOPINO: Just so everybody is on
22 the same page. If that's the route that you go, and if
23 that's the route that the Committee decides to go, that
24 would mean that your conditions or I assume questions to

1 the Applicant would be due a week from today, which would
2 be April 27th. The answers would be due the following
3 Monday, which would be May 4th. And, then, there would be
4 a technical session to follow that, if I understand
5 correctly?

6 MR. ROTH: Correct.

7 MR. IACOPINO: And, my question would
8 be, would that be May 11th? I understand that the week of
9 the 18th there's scheduling problems for some of the
10 Parties, or May 25th, which is a Monday.

11 VICE CHAIRMAN HONIGBERG: That's
12 Memorial Day.

13 MR. IACOPINO: And, that may be Memorial
14 Day. Or, a day that week. I would recommend the week of
15 the 11th, because that way, if there's any follow-up from
16 the tech session, you guys can complete it, understanding
17 that there will be a final hearing during the first week
18 of June.

19 MS. GEIGER: So, excuse me, Attorney
20 Iacopino. Could you please repeat that last part.

21 MR. IACOPINO: Sure. I would recommend
22 that the technical session be May 11th, so that you then
23 have a couple of weeks between the end of the technical
24 session and the first week of June, when you want to have

1 the hearing.

2 MS. GEIGER: Yes. If we could, because
3 the representatives from the Company need to travel here,
4 we'd prefer not to do it on a Monday, if we do it on the
5 12th.

6 MR. IACOPINO: Any objection to the 12th
7 for that? Or even another day in that week. I mean, I
8 was just going because it followed week-to-week.

9 MR. ROTH: The only day that I have any
10 trouble with that week is Thursday, the 14th, in the
11 afternoon, I have to be in Boston. Everything else I can
12 deal with.

13 MR. IACOPINO: Mr. Watson, any
14 difficulty with the 12th?

15 MR. WATSON: No. No conflicts.

16 MR. IACOPINO: So, a technical session
17 on May 12th then. Does that satisfy everybody, assuming
18 the Committee wants to do it this way? And, then, we
19 would -- I would confer with the Committee members to get
20 their schedules for the first week of June to have a final
21 hearing.

22 So, again, just to make sure that I've
23 said it the same way twice, and everybody is on the same
24 page: Requests for information, submission of proposed

1 conditions, to be provided by Counsel for the Public and
2 Mr. Watson to the Applicant, one week from today, April
3 27th; responses to those conditions or responses to
4 requests for information to be provided by the Applicant
5 to Counsel for the Public and Mr. Watson by the following
6 Monday, which is May 4th; a technical session to be held
7 May 12th; and the final hearing during the first week of
8 June.

9 CHAIRMAN BURACK: With respect to
10 scheduling another session with the Committee itself, I am
11 looking at my own calendar for the first week of June, and
12 noting that I will likely be unavailable at least on the
13 3rd and 4th of June.

14 And, I'd just like to get a sense from
15 other members of the Committee as to what their
16 availabilities are for the 1st, 2nd, and 5th, if you all
17 would just check your calendars. Just want to make sure
18 that we have a reasonable -- a reasonable likelihood of
19 being able to have a quorum.

20 So, let's just go down the line here.

21 DIRECTOR SIMPKINS: I am available on
22 the 4th and 5th of that week. I am not -- potentially the
23 1st, but definitely not the 2nd or the 3rd.

24 COMMISSIONER SCOTT: I'm open that week,

1 except the 5th, Friday.

2 CHAIRMAN BURACK: I can see this is
3 going to get very difficult very quickly. We may not be
4 able to -- we may not be able to set a date here. But --

5 VICE CHAIRMAN HONIGBERG: Well, do you
6 want to finish the process?

7 CHAIRMAN BURACK: Yes. Why don't we
8 finish the process and see. But I'd actually like to --
9 we ought to look at the following week as well, dates that
10 following week. And, I would ask you all to identify
11 availabilities on the 9th, 10th, 11th -- well, 9th, 10th,
12 and 11th, as well as the 1st through the 5th.

13 VICE CHAIRMAN HONIGBERG: All right.
14 I'm open the 1st through the 5th, pretty much, and the
15 11th. Not the 10th. That was the date, right, 10 and 11?

16 CHAIRMAN BURACK: Nine, ten, and eleven.

17 VICE CHAIRMAN HONIGBERG: I'm not
18 available 9 or 10.

19 CHAIRMAN BURACK: Okay. So, again, can
20 we just go back to Mr. Simpkins, Director Simpkins?

21 DIRECTOR SIMPKINS: You want to just do
22 the second week?

23 CHAIRMAN BURACK: Well, why don't you
24 tell us the first week again and the second week.

1 DIRECTOR SIMPKINS: Okay. The 1st is a
2 possibility. I have the 4th and 5th available. In
3 regards to the next week, I could probably do the 10th or
4 the 11th, and the 9th, up until 2:30.

5 CHAIRMAN BURACK: Thank you.

6 COMMISSIONER SCOTT: And, again, --

7 CHAIRMAN BURACK: Commissioner Scott.

8 COMMISSIONER SCOTT: Again, the week of
9 June 1st, I can do any day, except June 5th, Friday. On
10 the week of June 8th, the only day I can do is the 11th,
11 Thursday.

12 CHAIRMAN BURACK: Okay. Director
13 Boisvert.

14 MR. BOISVERT: There's nothing I can't
15 reschedule those two weeks.

16 CHAIRMAN BURACK: Thank you. Director
17 Bailey.

18 DIRECTOR BAILEY: I can be available any
19 of those days.

20 CHAIRMAN BURACK: Thank you.

21 DIRECTOR WRIGHT: I could arrange my
22 schedule for any day.

23 CHAIRMAN BURACK: Director?

24 DIRECTOR HATFIELD: I could do the 1st,

1 5th, or 11th of June.

2 CHAIRMAN BURACK: Thank you.

3 DIRECTOR FORBES: The 10th will not work
4 for me. All the other days are fine, though.

5 CHAIRMAN BURACK: All the other days are
6 fine, 1 through 5, or 11, through the end of that week.
7 Okay. It sounds like the 11th would work for everyone
8 here. Am I reading that correctly?

9 VICE CHAIRMAN HONIGBERG: Uh-huh.

10 CHAIRMAN BURACK: Just confirm that once
11 more time on my own calendar. Yes. Why don't we plan
12 that we will come back on the 11th of June, that would
13 work for all Parties.

14 Again, our hope is that the Parties
15 would come back to us with a proposed final resolution of
16 this that is agreeable to all Parties. I would ask you
17 all to get as close as you possibly can to that. And, if
18 you're not going to be there by that time, you clearly
19 need to be prepared for us to hold a final adjudicatory
20 hearing in the matter, which would then take us to
21 deliberations to make a final decision on this, I would
22 like to think, on the 11th of June. I think it's fair to
23 say we all would like to have finality here as soon as we
24 reasonably and practically -- practicably can get there.

1 Are there any other thoughts or comments
2 that the Applicant or Counsel for the Public or Mr. Watson
3 would like to share at this time with the Committee?

4 MS. GEIGER: Nothing.

5 CHAIRMAN BURACK: Nothing from the
6 Applicant.

7 MR. ROTH: No, sir.

8 CHAIRMAN BURACK: Nothing further from
9 Counsel for the Public.

10 MR. WATSON: Nothing.

11 CHAIRMAN BURACK: Nothing further.
12 Members of the Committee, everybody comfortable with this
13 approach? I'm seeing a lot of nodding heads. I'm not
14 sensing any objection.

15 We will then proceed on the basis that
16 has been discussed, and we will stand adjourned in this
17 matter until the 11th of June here. We should probably
18 talk about the time. Would folks be comfortable starting
19 at 9:00, rather than at 10:00?

20 MR. BOISVERT: Uh-huh.

21 CHAIRMAN BURACK: That work?

22 MR. BOISVERT: Yes.

23 CHAIRMAN BURACK: Okay. So, unless --
24 we just need to confirm that there's a hearing room

1 available.

2 COMMISSIONER SCOTT: We know we're not
3 in a hearing.

4 VICE CHAIRMAN HONIGBERG: We know we're
5 not in a hearing.

6 CHAIRMAN BURACK: Okay. We'll get out,
7 obviously, a final notice of the meeting time and
8 location, but --

9 MR. ROTH: Mr. Chairman, I'm sorry?

10 CHAIRMAN BURACK: Yes.

11 MR. ROTH: Since you asked me if there
12 was anything else, I've actually thought of something.
13 And, that is, is there a date by which, if we were to file
14 a motion for approval of an agreement, that such a motion
15 should be filed by?

16 (Chairman Burack conferring with Atty.
17 Iacopino.)

18 CHAIRMAN BURACK: Yes. It's a fair
19 question, but I don't think we have any answer other than
20 "as soon as possible", certainly. But sooner, the sooner
21 we know that you all have been able to reach some kind of
22 an agreement among yourselves, the better. But,
23 regardless, we're going to have to meet in any event, in
24 order to either approve that or hold the hearing that

1 would be necessary for us to be able to make our final
2 determinations on.

3 MS. GEIGER: And, in light of that, Mr.
4 Chairman, I would just offer that -- make an oral motion
5 to waive the Commission's rule that requires a ten-day
6 period for filing objections to motions. Because it
7 occurs to me that, if the motion to approve, assuming
8 that, if we are able to reach agreement with Public
9 Counsel, and we file the motion to approve that settlement
10 agreement, and it didn't allow a ten-day window between
11 the filing of the motion and the hearing, we all would not
12 know, you know, if Mr. Watson objected, what the nature of
13 his objections might be. And, so, we'd like that window
14 shortened, I'd like that window shortened, if we can, to,
15 you know, something less than ten days.

16 CHAIRMAN BURACK: Okay. So, I'm just
17 looking back at the calendar. The hearing is scheduled
18 for Thursday, the 11th. Could we ask, if you're going to
19 have a settlement agreement ready for us, that you file it
20 with us by the 5th of June, so that Parties would have to
21 file their objections certainly prior to the -- prior to
22 the 11th, that is no later than the 10th?

23 MR. IACOPINO: One other thing, Mr.
24 Chairman, that I would point out, is that this schedule

1 anticipates that neither Counsel for the Public nor
2 Mr. Watson will file any kind of prefiled testimony or
3 have any witnesses. Is that a correct understanding?

4 MR. ROTH: My purpose for having Mr.
5 Pelletier present here today was to rebut, as a matter of
6 testimony, the notion that DES was operating under a
7 delegation of authority to approve these changes. If
8 we -- from what I understand, and I guess she should speak
9 for herself, but Attorney Geiger indicated she was willing
10 to not press that argument. If that argument is not
11 pressed, then I do not have a need to have anybody from
12 DES present. That, as you may have seen from the
13 memorandum that I filed, I believe that the question of
14 delegation is a factual issue. And, if that argument is
15 to be made successfully, there needs to be facts about it.

16 And, so, I guess that's where I am. I
17 won't need a witness on that issue. And, I don't
18 anticipate witnesses on other issues, if that question is
19 not being put before you.

20 CHAIRMAN BURACK: Before we ask Attorney
21 Geiger to speak to this, I just want to ask, Mr. Watson,
22 did you anticipate any prefiled testimony or any
23 witnesses? I assumed not, based on the fact there wasn't
24 anything prepared for today, but I don't know that.

1 MR. WATSON: I would like to reserve the
2 right to talk to somebody from the DES, to question
3 somebody from the DES. So, I'm not quite sure what the
4 proper procedure would be for that.

5 CHAIRMAN BURACK: I think, before that
6 could be resolved, it would helpful to hear, Attorney
7 Geiger, from you on this point.

8 MS. GEIGER: With respect to Attorney
9 Roth's representations, it would be the Applicant's
10 preference not to litigate further on the issue that we
11 all had briefed back in December of 2013 regarding who had
12 authority to do what. We think we've come a long way to
13 resolving the issues that have been submitted to the SEC
14 and we resolved them successfully. So, we don't think
15 that -- we don't want to belabor the docket any further.
16 We're here. We want to submit to the Committee whatever
17 the Committee wants to review, in terms of, you know, what
18 the as-built plans are. They have been on file for over a
19 year now. We filed them in March of 2014. We just think
20 it would be a more productive use of everybody's time if
21 we just either hopefully came forward with a settlement
22 agreement on amending the Certificate or provided some
23 testimony, so that you could hear from Mr. Walker
24 regarding what the changes were, as reflected in the

1 as-built plans.

2 CHAIRMAN BURACK: Thank you. So, I take
3 it from that then that the intention would not be to raise
4 issues as to whether or not DES had or, for that matter,
5 any other agency in state government, had authority to act
6 in the way that they acted, is that correct?

7 MS. GEIGER: That's right. We just
8 prefer not to -- Mr. Walker didn't file testimony on that,
9 I think, and we had, way back when, all thought that that
10 would be an issue that would have been briefed and decided
11 as a threshold legal or jurisdictional issue. I think
12 we've all moved a long way from that. And, so, I think
13 we're just going to go straight to having the Committee
14 review and hopefully approve the plans for the as-built
15 Facility.

16 MR. ROTH: Mr. Chairman, just so I think
17 the record is clear, at least with respect to my views.
18 DES had the authority to act the way it acted. It just
19 didn't have the effect that was at least originally urged
20 by Groton Wind. They had the authority to amend the
21 Wetlands Permit and the Alteration of Terrain Permit. So,
22 we're not saying that they didn't have the authority to
23 act the way they acted.

24 CHAIRMAN BURACK: Thank you. Thank you

1 for that. And, based on this, it sounds to me that, if
2 these issues even were to have to be addressed in some
3 manner through testimony, it sounds like the testimony on
4 this would be quite -- would be quite brief.

5 So, what I want to turn to then is just
6 a question then as to whether there -- it sounds like
7 there probably would be no need for any other testimony at
8 all, unless you cannot get to some kind of resolution, and
9 it turns out we need to hear testimony from somebody on
10 that issue. Otherwise, it sounds like the testimony that
11 we would be expecting to hear or to see would be testimony
12 relating to whether or not the amendments that would be
13 constituted in effectively amending the Certificate to
14 adopt the as-built plan, whether those amendments would be
15 consistent with or would not otherwise alter the findings
16 originally made by the Committee pursuant to RSA 162-H:16,
17 when the Committee originally issued the Certificate. Is
18 that correct? That's what the testimony issues or
19 testimony would go to?

20 MS. GEIGER: Yes.

21 MR. ROTH: Mr. Chairman, I'm sorry to
22 disagree with you, but the Chairman has stated a -- I
23 think, a legal standard of sorts, in terms of "what is the
24 standard for amending a certificate?" That, while it was

1 an interesting utterance by Counsel for the Committee at a
2 previous hearing on another matter, has never been
3 established by this Committee and is not clear from any of
4 the law on this subject. That is, the statute doesn't
5 provide a legal standard by which you are to evaluate a
6 motion to amend.

7 And, the decision in the Berlin Station
8 case, essentially, well, did not address a standard, it
9 simply approved the Berlin Station amendments without
10 addressing a standard for it.

11 So, there may be yet a legal dispute
12 over "what is the standard by which the witness's
13 testimony is measured?" And, I know in his prefiled
14 testimony, he -- it's based upon the adoption of a
15 standard. But that is -- they're still -- I don't agree
16 that that is the proper standard to follow.

17 And, for purposes of the motions that
18 have already been granted, I'm not going to quarrel with
19 that. But, if we're going to have a fight over the Motion
20 to Amend, I'm not going to agree that that standard that
21 you have just described is, in fact, the proper legal
22 standard to follow.

23 (Chairman Burack conferring with Atty.
24 Iacopino.)

1 MR. ROTH: I don't think you need to
2 solve that one today.

3 CHAIRMAN BURACK: Well, Attorney Roth, I
4 appreciate your view that you don't think we need to solve
5 that today. But what I don't want to do is find ourselves
6 in a situation on the 11th of April [June?] where we have
7 Parties that have different views as to what the legal
8 standard is that we should be applying here. And, if
9 that's where we're going to find ourselves, then I'm
10 thinking we may have to ask each party to brief what they
11 believe the appropriate legal standard is. I'm certainly
12 happy to hear whatever thoughts you might have today on
13 this subject. But, otherwise, we're going to, in order
14 for us to be able to resolve this, we're going to have to
15 know what you think the legal standard is. And, certainly
16 we're going to have to go back and look at earlier cases
17 to see, as you have suggested, we have never articulated
18 such a standard.

19 Attorney Geiger.

20 MS. GEIGER: Yes, Mr. Chairman. Thank
21 you. Obviously, it would be very helpful for the
22 Applicant to know what the standard is, since we're going
23 forward here with the motion, in the event we aren't able
24 to settle, we would have a burden of some sort.

1 As I indicated much earlier today, that
2 there really isn't any process or standard articulated in
3 either the statute or the rules for a motion to amend the
4 certificate. I did some research on that subject, and I
5 came up with the transcript cites that I put in the
6 motion, in our motion.

7 I'm not sure, I don't believe that
8 Public Counsel responded to that in his filings. And, if
9 he did, I'd welcome the opportunity to hear today, right
10 now, what his response is. And, even if he didn't respond
11 to the motion, and the provision regarding the standard
12 for amending the certificate, obviously, Attorney Roth is
13 objecting now to that standard. And, so, he obviously
14 must have some other standard in mind. So, I think, so
15 that we can all be on the same page going forward, I would
16 appreciate knowing what that is.

17 CHAIRMAN BURACK: Attorney Roth, do you
18 have any thoughts you could share with us at this time?

19 MR. ROTH: Certainly. And, I would also
20 be happy to file a memorandum on it. But I think that the
21 standard is the same standard that you would use to
22 determine whether a project as a whole is certificatable,
23 and that is what's set forth in Section 16. You would
24 need to make findings that the amendment did not result in

1 an unreasonable adverse effect in the various ways that
2 they are specified there.

3 The idea of seriously undermine or, you,
4 undermine the -- I can't even remember exactly how it's
5 expressed, but that doesn't really factor in the statute.
6 But the statute does require findings for a certificate,
7 as set forth in Section 16.

8 CHAIRMAN BURACK: Thank you. That's
9 helpful to understand your view on that.

10 I think what I will ask the Parties to
11 do then, if you are not going to be able to reach a
12 settlement, I would ask the Parties, and it's -- I'm not
13 going to mandate that you do this, but I'm going to give
14 you the opportunity to, if you wish to, to file a brief.
15 And, I would ask you please to keep it brief, no longer
16 than perhaps ten pages, and, ideally, less than that,
17 setting forth what you believe is the appropriate legal
18 standard to apply in considering approval of amendments to
19 the Certificate.

20 As has been pointed out, we have already
21 effectively, today, approved multiple amendments to the
22 Certificate. We have done so in other proceedings in the
23 past. Without having, to my knowledge, without having to
24 necessarily clearly articulate a specific legal standard

1 that applied in the detail that we've been discussing here
2 today, but I'd like to be prepared to have that, in the
3 event that we have to deal with that issue. And, so, if
4 you are going to file such with us, I would ask you if
5 you'd file that by June 5th as well.

6 MS. GEIGER: Okay.

7 (Chairman Burack conferring with Vice
8 Chairman Honigberg.)

9 CHAIRMAN BURACK: The one other issue
10 that I'm reminded here by Commissioner Honigberg that we
11 may want to just run to ground here, Mr. Watson, is your
12 expressed interest in potentially being able to speak with
13 somebody at DES. Can you help us better understand what
14 the issue or issues are there that you would anticipate
15 needing to question somebody about?

16 MR. WATSON: I'm interested in the
17 process that the amendments were approved by. When the
18 different items in the Certificate were changed, I'd like
19 to have some background on how it was presented to the DES
20 and how the DES approved the changes.

21 MS. GEIGER: Mr. Chairman?

22 CHAIRMAN BURACK: Yes, Attorney Geiger.

23 MS. GEIGER: Yes. Thank you. I think
24 an inquiry of that nature is basically irrelevant to the

1 question of whether or not the amendment should be
2 approved. As I said earlier, we don't want to get into a
3 factual controversy or legal argument about what the
4 process should have been, could have been. We think it's
5 more productive to move forward with this Committee.
6 We're here now. We wanted the Committee to review and
7 approve the modified plans. What transpired in the past
8 really is of no consequence.

9 CHAIRMAN BURACK: Thank you, Attorney
10 Geiger. I appreciate hearing your views on that. I will
11 share another reason why I don't think that legally we
12 could, in fact, entertain that kind of inquiry. And, that
13 is that, under our statute, we do not have authority to
14 sit in judgment of other agencies, that is be it DES or
15 any other agency. That is, we do not have, under RSA
16 162-H, we are not given the authority to determine whether
17 any other agency acted within its authority or not. What
18 we have jurisdiction over is is the Applicant and the
19 Project itself. But, specifically, we have jurisdiction
20 over the Applicant. And, I believe the legal issue that
21 ultimately would need to be decided here, if there has to
22 be a legal issue decided, is whether the Applicant acted
23 appropriately under the circumstances. That is what we,
24 as an entity, have authority over.

1 So, I don't -- I do not see how
2 questioning of another agency's personnel, be it DES or
3 any other agencies, as to how they -- what the process was
4 they went through in making determinations, I don't
5 believe that that would be relevant to a matter over which
6 we have legal authority to make a determination. So, I
7 just offer that as a view and an analysis here of where I,
8 legally, I believe this would come out.

9 So, having said that, I think that we
10 have identified that there would be no need for a
11 questioning of personnel from DES or, as I said, for that
12 matter, I think probably any other agency in state
13 government. The focus really is on whether or not the
14 Certificate should be amended, and that, I believe, is the
15 primary issue. And, if necessary, we would have to go to
16 the issue of whether the -- whether the Applicant acted
17 appropriately. But, in the first instance, it's really a
18 question of whether the Certificate should be amended.

19 So, unless there is any other matter to
20 come before us today, we will stand adjourned until the
21 11th of June, with the understanding that the Parties will
22 be moving forward on the schedule that we discussed here
23 today.

24 Seeing nothing else, we will stand

1 adjourned. Thank you.

2 MR. ROTH: Thank you.

3 ***(Whereupon the hearing was adjourned at***
4 ***2:12 p.m., and the hearing to reconvened***
5 ***on June 11, 2015, commencing at 9:00***
6 ***a.m.)***

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