

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**May 1, 2014** - 1:30 p.m.  
DRED - North Region Office  
629A Main Street  
Lancaster, New Hampshire

**IN RE: SEC Docket No. 2014-03  
GRANITE RELIABLE POWER, LLC:  
Motion of Granite Reliable  
Power, LLC, to Amend a  
Certificate of Site and Facility,  
with Request for Expedited Relief.  
(Prehearing conference)**

**PRESENT:**

Michael J. Iacopino, Esq.  
(Brennan, Caron,  
Lenehan & Iacopino)

**SITE EVALUATION COMMITTEE:**

Counsel to the Committee  
(Presiding Officer for  
this prehearing conference)

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**ALSO PRESENT:**

**Counsel for the Applicant:** Harold C. Pachios, Esq.  
Matthew S. Warner, Esq.  
(Preti, Flaherty, Beliveau  
& Pachios)

**Counsel for the Public:** Peter Roth, Esq.  
Senior Asst. Atty General  
Department of Justice

**Reptg. Windaction.org:** Lisa Linowes

**Reptg. Coos County Commission:** Richard Samson, Cmsr.

**OTHER APPEARANCES:** Iryna N. Dore, Esq.  
(Brennan Caron, Lenehan  
& Iacopino)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**I N D E X**

**PAGE NO.**

DISCUSSIONS RE: WITNESSES & TESTIMONY, & OTHER ISSUES RELATED THERETO	5
DISCUSSION RE: SCHEDULING	34
DISCUSSION RE: STIPULATIONS	56
DISCUSSION RE: DOCUMENTS	64
DISCUSSION RE: SETTLEMENT	70

**P R O C E E D I N G**

1  
2 MR. IACOPINO: All right. We are here  
3 today for a prehearing conference in the matter of Granite  
4 Reliable Power, LLC's Motion to Amend its Certificate of  
5 Site and Facility. This matter has been assigned Docket  
6 Number 2014-03 for the New Hampshire Site Evaluation  
7 Committee. I don't know if you all saw, but this morning  
8 both Commissioner Samson and the Windaction.org's motions  
9 to intervene were granted. And, those orders were issued  
10 this morning.

11 So, why don't we go around the table,  
12 introduce ourselves. I am Mike Iacopino. I am the  
13 Counsel to the Committee and the presiding officer for our  
14 prehearing conference here today.

15 MS. DORE: Iryna Dore.

16 MR. IACOPINO: Iryna Dore is my  
17 associate from my office. She is going to help me out.

18 MR. ROTH: Peter Roth, Counsel for the  
19 Public.

20 MR. IACOPINO: Commissioner.

21 MR. SAMSON: Rick Samson, Commissioner,  
22 Coos County District 3.

23 MS. LINOWES: Lisa Linowes,  
24 Windaction.org.

1 MR. WARNER: Matt Warner, attorney for  
2 Granite.

3 MR. PACHIOS: Harold Pachios, Preti  
4 Flaherty, attorney for Granite.

5 MR. IACOPINO: Okay. Our proceedings  
6 here today are informal, even though we are having them  
7 recorded by a court reporter. The purpose of a prehearing  
8 conference is to, primarily, scheduling, in this  
9 particular case, but we also are statutorily authorized at  
10 these types of conferences to discuss offers of  
11 settlement; offers of stipulation to facts or simplifying  
12 the issues through stipulations or admissions; to discuss  
13 the number of witnesses that might be involved in any  
14 particular proceeding, if we're going to have any  
15 limitations on those witnesses, how the witnesses'  
16 testimonies will be presented; if there's going to be any  
17 consolidation of examination; and, of course, scheduling,  
18 and anything else that will aid in the disposition of the  
19 proceedings. So, all of those things are on our table  
20 here today.

21 I know that we are relatively early on  
22 in this particular docket. So, what I wanted to first do  
23 was to discuss with the Applicant their intentions with  
24 respect to witnesses and testimony. You have filed a

1 motion and an attachment to the motion. And, normally, in  
2 our proceedings, we normally have taken testimony on a  
3 prefiled basis. So that we would have the witnesses'  
4 testimony would be submitted by you, prepared by you, they  
5 would sign it under oath, and it would be submitted in a  
6 written form. And, that's the normal way. And, then,  
7 cross-examination occurs at an adjudicative proceeding.  
8 That's the way that we have handled these things  
9 throughout at least my tenure with the Committee.

10 And, so -- and, normally, having the  
11 burden of proof, you would go first. So, I turn to you  
12 guys first, to tell me what do you expect for witnesses,  
13 and as far as their testimony, what can we be expecting in  
14 terms of volume and whatnot?

15 MR. PACHIOS: I would anticipate that we  
16 would have two witnesses. And, I would think that we  
17 can -- I mean, I don't know where discovery fits in here.  
18 Normally, I've done a lot of adjudicatory hearings in  
19 Maine, --

20 MR. IACOPINO: Uh-huh.

21 MR. PACHIOS: -- in both the PUC and the  
22 Department of Environmental Protection. And, normally, we  
23 file it after discovery, but I'll abide by however you  
24 folks want to do it, because discovery aids in preparing

1 testimony. However, we can get -- we can get prefiled  
2 testimony done in ten days. And, --

3 MR. IACOPINO: Okay.

4 MR. PACHIOS: But I don't want to do it  
5 in ten days, if that means that everybody else does  
6 nothing for two months. I mean, I'm willing to work to do  
7 it all rapidly. And, we're -- and, we'd be open to  
8 discovery. You know, if you want to take depositions, get  
9 production of documents or whatever, you know, we're open  
10 to do that right away.

11 MR. IACOPINO: Okay.

12 MR. PACHIOS: And, so, our two witnesses  
13 would likely be Tyler Phillips, who's the -- from Horizon  
14 Engineering, who is the engineer on this. I believe he  
15 was around when the original -- we weren't, but when the  
16 original matter was heard. And, probably Mr. Cyr, who is  
17 in charge of that project at Granite.

18 MR. ROTH: How do you spell his name?

19 MR. PACHIOS: C-y-r.

20 MR. IACOPINO: And, what's his first  
21 name?

22 MR. PACHIOS: John.

23 MR. WARNER: I think it's John.

24 MR. PACHIOS: John. We might change

1 that. You know, we might add somebody or something. But  
2 that's my thinking right now. He knows a lot about it,  
3 because he's there every day.

4 MR. IACOPINO: The way that we have  
5 generally operated here is we actually have a rule,  
6 when -- at least when you're filing an application for a  
7 certificate, that the prefiled testimony gets filed with  
8 the application. And, we've found that that generally  
9 makes discovery move smoother. And, the way that we have  
10 operated in the past is, the party with the burden of  
11 proof files their prefiled testimony within, and this has  
12 been somewhat dictated by what the parties wanted to do as  
13 far as discovery goes, we then engage in a tech session,  
14 which are informal sessions, where you have your witnesses  
15 there, they can be questioned by the other parties, they  
16 can get the information they need, make whatever document  
17 requests are necessary or that they feel are necessary.  
18 And, then, they submit their prefiled testimony. And, we  
19 have another tech session, where you get the same  
20 opportunity to discover from their witnesses, the same  
21 types of information.

22 MR. PACHIOS: Okay.

23 MR. IACOPINO: Assuming there's anything  
24 that you're actually seeking. And, that's worked well. I



1 don't -- it has you providing your testimony before  
2 there's any real discovery on your part. But, in the  
3 past, we have been fairly lax, well, I shouldn't say  
4 "lax", but we've allowed supplemental testimony, if it was  
5 necessary.

6 MR. PACHIOS: Okay.

7 MR. IACOPINO: After you do your  
8 discovery. And, in fact, in most of our cases, we have  
9 actually a designation of a date where final supplemental  
10 testimony is due.

11 MR. ROTH: Yes. We usually build it  
12 into the -- into this process.

13 MR. IACOPINO: Yes. Build it --

14 MR. PACHIOS: So, I can -- so, we're  
15 happy to provide the prefiled testimony right away. The  
16 reason that, because we're on the record, we did not file  
17 the prefiled testimony as contemplated by 220.22 [202.22?]  
18 is that we -- it was not app -- we didn't view it as an  
19 application, we viewed it as a motion. So, that's the  
20 reason we did that. But we're very happy to provide the  
21 prefiled testimony right away.

22 MR. IACOPINO: I understand that, that  
23 that's the reason. Does anybody have any objection  
24 proceeding in that general -- I mean, we haven't set any

1 dates or anything, but proceeding in that general fashion?  
2 They will file their prefiled testimony, we'll have some  
3 kind of tech session. If you want to do some different  
4 kind of discovery, if you want data requests or whatever,  
5 we can role that into a schedule. Ultimately, you'll get  
6 the opportunity to do your discovery of their witnesses.  
7 Then, you'll be required to file your prefiled testimony,  
8 if you have any, and they would have the same rights with  
9 respect to your -- of discovery with respect to your  
10 testimony.

11 MR. ROTH: Mike, in general, I don't  
12 have any problem with that program, what we usually follow  
13 here. But the only issue I have is that I would -- my  
14 witness will need to be an expert that I would need to  
15 retain with the authority of the Committee, and,  
16 generally, that takes some time. And, I would rather have  
17 an expert engaged prior to there being a tech session, to  
18 help me prepare for the tech session. And, I have not  
19 begun to even look for such a witness, because I have not  
20 seen any prefiled testimony from the Applicant. And, it  
21 was my position that the motion or petition, however you  
22 want to call it, is -- essentially, it should have been  
23 denied on its face for failure to file the prefiled  
24 testimony. And, I'm not going to litigate that now,

1 because here we are. But -- and, so, I haven't moved  
2 anywhere to do that. And, typically, what I do is, when I  
3 see the prefiled testimony, then I know what the issues  
4 are in the prefiled testimony and I know what to -- what  
5 kind of an expert that I may need. And, so, I can't  
6 really do anything like that until I see the prefiled  
7 testimony from the Applicant.

8 MR. IACOPINO: So, if we built in a --  
9 into the schedule --

10 MR. ROTH: A four-month period to get  
11 the order allowed? Just kidding.

12 MR. IACOPINO: No. If we build into the  
13 schedule a date for you to file a motion for expert  
14 services, and I assume that you're going to be asking the  
15 Applicant to foot the bill for it?

16 MR. ROTH: That's correct. Then, under  
17 the statute, that's what I would do.

18 MR. IACOPINO: So, I would suggest that,  
19 that later on that that's something that we talk about.  
20 Obviously, I know you don't have an expert lined up, but  
21 maybe some process for you guys to at least get together  
22 on that at the appropriate time, so that it doesn't -- so  
23 that we don't get held up on waiting for a motion for  
24 expert services.

1 MR. ROTH: And, the way I typically do  
2 it, Mike, is, once I identify the expert and come up with  
3 the expert's budget, I contact whoever the applicant is  
4 and seek their consent to it. And, once I have that, or I  
5 don't, because sometimes they don't consent, --

6 MR. IACOPINO: Right.

7 MR. ROTH: -- I file a motion right  
8 away. So, I don't think you need to build into the order  
9 anything that says that I "will consult with them".  
10 That's just the way I do it.

11 MR. IACOPINO: And, that's the way I  
12 would hope you would do it. But, I think, if we have it  
13 built into the order, it's just going to make things  
14 move -- move quicker, you know? Because, when there's  
15 deadlines, then --

16 MR. ROTH: Oh, I don't have any problem  
17 with a deadline for me --

18 MR. IACOPINO: Okay.

19 MR. ROTH: -- by which I must file a  
20 motion seeking my appointment of an expert, you know.

21 MR. IACOPINO: Commissioner, do you have  
22 any objection to proceeding in that fashion?

23 MR. SAMSON: No, I don't. This being my  
24 first hearing and experience with this, I'm going to have

1 to depend on everybody at the table for guidance.

2 MR. IACOPINO: Okay. If at any point in  
3 time during our conversation here today, you don't  
4 understand something or we use words that you don't  
5 understand or you don't understand their meaning in this  
6 particular context, please ask.

7 MR. SAMSON: Thank you.

8 MR. IACOPINO: Okay? And, I mean, when  
9 we talk about "prefiled testimony", it's basically,  
10 instead of having a witness come in, raise their hand, and  
11 answer questions from their own lawyer, --

12 MR. SAMSON: Right.

13 MR. IACOPINO: -- they do that all in  
14 writing, and it's done in advance, which is a little bit  
15 different than a courtroom procedure. And, it actually --  
16 the nice thing about it, it gives everybody a starting  
17 point.

18 MR. SAMSON: And, there will be some  
19 depositions, is that what you're saying?

20 MR. IACOPINO: Well, it looks like it's  
21 a deposition when they file it, but it's not technically a  
22 "deposition".

23 MR. SAMSON: Okay.

24 MR. IACOPINO: But you would have an

1 opportunity to question that witness at -- usually, we  
2 have what are called "tech sessions". And, it's just a  
3 title for, basically, Mr. Pachios and Mr. Warner would  
4 come in here with Mr. Phillips and Mr. Cyr. They would  
5 sit here, you would have the benefit of their prefiled  
6 testimony, you would have the benefit of having read it.  
7 You get to ask them questions. If Mr. Roth has an --  
8 decides to hire an expert witness, his expert could be  
9 sitting here helping him with what questions to ask. And,  
10 sometimes those tech sessions turn into the experts  
11 discussing things with each other.

12 MR. SAMSON: Uh-huh.

13 MR. IACOPINO: Which actually is  
14 probably the most helpful kind of tech session, when it  
15 happens. It doesn't always happen, but it's a process by  
16 which we can do that. So that, when we talk about "tech  
17 sessions", that's what we're talking about. If you hear  
18 the term "data requests", it's basically written  
19 questions. And, those are basically just written  
20 questions you would submit to the other parties, and they  
21 would be required to answer them within a certain amount  
22 of time, which we would decide --

23 MR. SAMSON: Uh-huh.

24 MR. IACOPINO: -- today what that amount

1 of time would be, assuming that the Chairman of the  
2 Committee would affirm -- confirm whatever schedule we  
3 decide.

4 MR. SAMSON: Uh-huh.

5 MR. IACOPINO: Ms. Linowes, I'm sure you  
6 are well familiar with this entire process.

7 MS. LINOWES: And, I thank you for that.  
8 I have just a couple of questions with regards to the  
9 process. I don't have an issue, *per se*.

10 MR. IACOPINO: Okay.

11 MS. LINOWES: But the witnesses that  
12 were on the stand back when Granite Reliable was going  
13 through the proceedings, we discussed the issues around  
14 the High Elevation Mitigation Plan, the 12-foot wide road  
15 on Kelsey, they were Lyons, Pelletier, LaFrance, and not  
16 Mr. Tyler -- I don't -- or, rather Phillips, Mr. Phillips,  
17 I don't recall him being on the witness stand. We also  
18 had AMC and Fish & Game involved in that. So, there were  
19 representations particularly made by Lyons, Pelletier, and  
20 LaFrance about the 12-foot wide road, and also the idea of  
21 revegetating around the turbine pads and other things, and  
22 kind of where -- where things are today, their expectation  
23 of that being no problem where we are -- rather, back  
24 then, where we are today, where now there's a change.

1                   So, are we going to have any testimony  
2 or cross-examination on what those witnesses presented  
3 back then, and how now that's not -- that potentially  
4 misrepresentations of what the future would hold or just,  
5 I mean, where -- what is the plan around that?

6                   MR. IACOPINO: Well, the request for  
7 relief is to amend an existing certificate. This is not  
8 an -- this isn't an enforcement proceeding, it isn't a  
9 proceeding that is designed to punish anybody or anything  
10 like that. To the extent that those witnesses made  
11 representations, they're in that record. And, as you  
12 know, there are ways that you can get those  
13 representations from that record into the record of this  
14 docket.

15                  MS. LINOWES: Yes.

16                  MR. IACOPINO: I mean, obviously, the  
17 transcript exists, whatever orders were issued back then  
18 exist. Most of them are still up right on the -- on the  
19 website for the Committee. So, I mean, there's certainly  
20 a way for you, if you believe, or any party that believes  
21 that those things are relevant, --

22                  MS. LINOWES: Uh-huh.

23                  MR. IACOPINO: -- to get them into this  
24 record. But they're moving to amend their certificate.



1 They get to choose what witnesses they're going to put on.

2 MR. ROTH: Mike, if I can just --

3 MR. IACOPINO: The Committee will have  
4 to decide if that's sufficient evidence to persuade them  
5 to let them amend their certificate, to allow the  
6 amendment.

7 MR. ROTH: In their reply to my  
8 objection, they said "All the evidence necessary to  
9 support its request is contained in the Amendment itself,  
10 the incorporated High Elevation Restoration Plan, and the  
11 transcripts contained in the original record." And, I  
12 think Ms. Linowes' point is not a bad one, really. And,  
13 that is, if they're going to try to submit the testimony  
14 that's in the record already, that was used to support the  
15 original program, to support the amendment, that seems to  
16 me to be a stretch, and would necessitate being able to  
17 cross-examine those witnesses again.

18 So, I don't -- so, I'm not sure where  
19 that goes. But it seems to me a question of hearsay and  
20 procedural fairness that, if, you know, they're going to  
21 say "see, here's the proof of this being a good idea,  
22 transcript, see, everybody?" And, we don't have the  
23 ability to bring those people back and say "hey, you know,  
24 would you have really thought the same thing about this

1 amendment, now that they're doing it?"

2 MR. IACOPINO: Well, you may, though. I  
3 mean, you may have the ability. You may want to call one  
4 of those people as your own witness, after you see what  
5 they file and after you go through a tech session with  
6 them. I don't know. Certainly, at this point, I can't --  
7 I can't say that --

8 MR. ROTH: But are you saying that they  
9 can't --

10 MR. IACOPINO: I can't make an  
11 evidentiary ruling whether something is going to be  
12 admitted or not.

13 MR. ROTH: Oh, I know. But, I think, to  
14 Lisa's point, you can't have the transcript as a witness,  
15 I mean, and that's what I'm afraid of is being suggested  
16 here. And, maybe that's not what they're actually  
17 attempting to do at this point, but --

18 MR. PACHIOS: There is an official  
19 record of that hearing. Evidence is evidence. It was  
20 sworn evidence. I think you can use the record in any  
21 kind of a proceeding. You can use an official record and  
22 ask that notice be taken of it, it -- sworn testimony.  
23 And, if you want to bring somebody back who's recorded in  
24 a transcript, you can bring them back and you say "did

1 you" -- you know, say "did you really mean this?" Or, you  
2 know, "is" -- you can do that.

3 MR. IACOPINO: And, I don't think that  
4 I've at all indicated she doesn't have a point. It's just  
5 it's more of an evidentiary issue than anything else. If  
6 you determine that you want to get these witnesses to come  
7 back and testify, if you're not happy with what's in the  
8 record already or not happy with asking the Committee to  
9 take administrative notice or adopt the record from the  
10 prior proceeding, then, you know, there's certainly  
11 avenues for you to try to do that. And, if you can't do  
12 it, you can always seek the aid of the Committee by filing  
13 a motion, if you think it's important to do that.

14 But, in terms of what we're here today  
15 for, I mean, that would require some evidentiary rulings  
16 to be made, which we cannot do today.

17 MR. ROTH: No. Clearly. But, I guess  
18 what I'm -- in terms of the procedure, I think it's fair  
19 for the other parties to know the extent to which the  
20 Applicant intends to rely on the prior transcript, and so  
21 that it doesn't pop out --

22 MR. PACHIOS: Fair enough.

23 MR. ROTH: -- at the hearing.

24 MR. PACHIOS: I can do that.

1 MR. ROTH: Because we may need to  
2 subpoena, if we're going to go down this road. I'm not  
3 saying that I even like the idea of bringing Mr. Lyons  
4 back. But, if we decide we're going to bring any of these  
5 people back, finding them and bringing -- and compelling  
6 them to return is going to be difficult and  
7 time-consuming.

8 MR. IACOPINO: It may be. But that's  
9 just part of, you know, that's one of the hard parts of  
10 this type of a practice. Mr. Pachios --

11 MR. ROTH: But that process takes time.  
12 And, so, we need some advance notice of the --

13 MR. IACOPINO: I understand. I  
14 understand. Mr. Pachios indicates that he can do  
15 something along those lines.

16 MR. PACHIOS: Yes. No, we have  
17 nothing -- we want to be totally transparent. Yes, we  
18 have reviewed the transcript, the sworn testimony. We  
19 reviewed everything that occurred that the SEC relied on  
20 in making its decision, the official record. That's what  
21 it relied on. Could not rely on anything beyond the  
22 record. And, so, we have -- and I'll show you some, the  
23 basic thing that we're looking in the record for, is did  
24 the SEC, when it made its decision, understand that there

1 would be occasionally needs to get big equipment up there,  
2 for safety reasons, to the top of that ridge, and would it  
3 require damaging some of the revegetated area outside of  
4 the 12 feet? And, --

5 MR. ROTH: I don't think I would even  
6 dispute that point.

7 MR. PACHIOS: And, the question was  
8 asked by you and the question was asked by Ms. Linowes,  
9 "Well, what are you going to do?" And, "that's what we're  
10 going to do." And, "are you going to revegetate?" "Yes.  
11 We're just -- every time we have to do it, we'll have to  
12 revegetate." "How often does it happen?" "Well, if  
13 people knew when a machine was going to go bad, you know,  
14 we'd let you know. But we don't know when a bearing is  
15 going to go. So -- but what we'll have to do, and we  
16 promise you, is we will revegetate when we do it." And,  
17 that's the key -- let me just finish this, because it's  
18 important that everybody understand the issues here.

19 MR. ROTH: Oh, this is -- I think I  
20 understand better --

21 MR. PACHIOS: Let --

22 MR. IACOPINO: Let him finish please.

23 MR. PACHIOS: Let me just get out one  
24 more sentence.

1 MR. ROTH: Okay.

2 MR. PACHIOS: If you don't mind?

3 MR. ROTH: I don't mind at all.

4 MR. PACHIOS: Okay.

5 MR. ROTH: I'm just kind of surprised by  
6 this, because I thought what you were asking for was to  
7 permanently re-widen the road, and not ever revegetate it.  
8 And, that seems to me, that's what your petition or your  
9 motion was asking for.

10 MR. PACHIOS: Of course, it does. Of  
11 course, it does.

12 MR. ROTH: And, if that's what you're --  
13 if that's not what you're asking for now, then we have a  
14 whole different case.

15 MR. PACHIOS: I said it -- how can you  
16 say "it's not what we're asking for", when I just said "of  
17 course, it does." The issue here, Mr. Roth, is whether  
18 that's what is best for the environment, that -- whether  
19 that's what New Hampshire Fish & Game and Appalachian  
20 Mountain Club think is best, which is to revegetate each  
21 time that, you know, you have to get a crane, a bearing  
22 goes or something, as is required now, or whether it makes  
23 sense to alter the Agreement in a small way to allow a  
24 wide -- excuse me, I'm getting your signals, but let me

1 just finish.

2 MR. ROTH: I'm not going to say  
3 anything. I was just looking at you while you're talking.

4 MR. PACHIOS: Yes. Let me just get --  
5 let me just finish. And, so, the issue is whether to just  
6 continue doing it the way they said they were going to do  
7 it in the transcript, which is bring it up to the ridge,  
8 make the repair, and then revegetate each time. Or,  
9 whether it makes more sense, environmentally more sense,  
10 to widen the road at certain points, so that that doesn't  
11 have to be done. And, that's what the SEC will decide.  
12 And, they may decide, "Look, we don't want to change this.  
13 We just want you to go and, after you bring the equipment  
14 up, revegetate again." And, there will be evidence on  
15 that. And, there will be testimony, I'm sure, from New  
16 Hampshire Fish & Game and Appalachian Mountain Club on  
17 what their views are on this. But that's the issue.

18 MR. ROTH: Well, you're going to have to  
19 present that testimony, because they're not parties.  
20 They're not going to just -- I mean, they haven't  
21 intervened, and they're not going to just volunteer to  
22 testify, unless you bring them in.

23 MR. PACHIOS: I appreciate the  
24 suggestion, and we'll do as you ask.

1 MR. ROTH: I didn't ask for that. I'm  
2 just saying, that that's -- you can't just expect them to  
3 show up.

4 MR. PACHIOS: Look, I --

5 MR. IACOPINO: There's actually --

6 MR. PACHIOS: -- I understand that.  
7 Because, after 45 years of this business, you understand  
8 that at least.

9 MR. IACOPINO: Actually -- actually,  
10 there is -- you've indicated you have two witnesses from,  
11 essentially, from the Company. You know, if you are going  
12 to have somebody from Fish & Game and AMC, they would be  
13 subject -- their testimony or prefiled testimony would be  
14 subject to whatever the same guidelines are that we set  
15 here today. And, that was one of the questions that I had  
16 for later on, --

17 MR. PACHIOS: Okay. That's fine.

18 MR. IACOPINO: -- is whether or not any  
19 parties were going to be seeking to --

20 MR. PACHIOS: Yes.

21 MR. IACOPINO: -- have anybody from the  
22 state actually testify or present testimony. So, if your  
23 intention is to present prefiled testimony from a  
24 representative from Fish & Game or AMC, that would have to



1 be built into our schedule as well, so that we're not  
2 delaying things to go back and get more testimony.

3 MR. PACHIOS: Well, we'll make a  
4 determination as to the testimony that we're going to  
5 present and how we'll present it. And, we will quickly  
6 advise you of it.

7 MR. ROTH: So, Mike, going back to the  
8 point that I was making about the record, and I understand  
9 the Applicant wants to rely on the entire record, I would  
10 ask that there be a period or a point by which they must  
11 designate those parts of the record they intend to rely  
12 on, and not leave it to the parties to guess as to what it  
13 is in the rather voluminous record that is going to be  
14 made a part of this record.

15 MR. IACOPINO: Is there any objection  
16 to --

17 MR. PACHIOS: No. No, no objection  
18 whatsoever.

19 (Court reporter interruption - multiple  
20 parties speaking at the same time.)

21 MR. IACOPINO: Yes, and just so it's  
22 clear. What I'm hearing is a request that we set a date  
23 by which, I would assume not just the Applicant, but any  
24 other party who's going to rely on any part of the record,

1 designates that part of the record that they're going to  
2 rely on.

3 MR. PACHIOS: Good idea.

4 MR. IACOPINO: Okay.

5 MS. LINOWES: Mike, if I may? There  
6 were also representations during the proceedings way back  
7 when that talked about whether or not the turbine pads  
8 could be revegetated as well. And, I think part of their  
9 plan is to -- is asking that the road be widened to  
10 16 feet, as opposed to 12, and allow for some of the  
11 vegetation on the turbine pads on Kelsey. And, there was  
12 pretty strong testimony, I thought, that said, because of  
13 warranty issues and maintenance on the turbines, they were  
14 not in a position to allow any vegetation around the  
15 turbine itself. So, I don't know how to bring that back  
16 in. That's something that was not highlighted by the  
17 Applicant.

18 MR. IACOPINO: Are you talking about on  
19 the pad itself or --

20 MS. LINOWES: On the pad itself.

21 MR. IACOPINO: Oh.

22 MS. LINOWES: Two hundred (200) foot  
23 radius. The testimony on cross-examination was that --

24 MR. IACOPINO: Yes, but I think I'm

1       misunderstanding what you're asking. Because the pads are  
2       concrete, if I understand correctly. So, how are they  
3       going to vegetate concrete?

4                   MR. ROTH: I don't think you're talking  
5       about the concrete.

6                   MS. LINOWES: Oh, not the foundation.

7                   MR. ROTH: The foundation. The pad is  
8       the big circle going around it.

9                   MR. IACOPINO: Oh, okay. Oh, all right.  
10      Okay. All right. I thought you were talking about the  
11      actual pad that it sits on. Okay.

12                   MS. LINOWES: Right. No, I don't  
13      think --

14                   MR. IACOPINO: All right. So, your  
15      concern there is whether they're going to revegetate that.  
16      And, that's not part of your plan, or you're saying you  
17      don't see that in the proposed revised elevation plan?

18                   MS. LINOWES: That is in -- I believe  
19      that is part of your plan, is to vegetate portions of the  
20      turbine pads now, as opposed -- as to, if they're going to  
21      be widening the roads, to lessen the impact somewhat by  
22      vegetating some of the turbine pads.

23                   MR. IACOPINO: Well, they filed the  
24      revised plan along with their motion, if I remember

1 correctly.

2 MR. ROTH: Well, Lisa, what is it you're  
3 asking for with respect to that? You said something about  
4 the --

5 MS. LINOWES: Yes. The testimony back  
6 in, whenever, 2009, --

7 MR. ROTH: -- the warranty. Are you  
8 saying that this is in violation of the warranty?

9 MS. LINOWES: It potentially could be,  
10 because there was clear testimony that stated that they  
11 could not --

12 MR. ROTH: So, that's apparently the  
13 same kind of thing.

14 MS. LINOWES: It is.

15 MR. ROTH: If you want to point to stuff  
16 in the record about how that violates the warranty, --

17 MR. IACOPINO: Not only that, but that's  
18 also when their witnesses have filed their testimony and  
19 we have a tech session, you can make inquiries at that  
20 point, and make requests for documents or whatever  
21 might -- that you might want, that's relevant, of course.

22 MS. LINOWES: I guess what I'm sort of  
23 wrestling with, and maybe it's a nonissue. But, to the  
24 extent that there, and I'm repeating what Peter said, but,

1 to the extent there were representations made, and  
2 decisions made on those representations, "no vegetation  
3 around the turbine pads", and now, I guess we're going to  
4 hear that "you can vegetate around the turbine pads and  
5 there won't be a problem", it's that we're dealing with a  
6 moving target here. And, I don't -- you know, I recognize  
7 this is not an enforcement proceeding. But, to some  
8 extent, when do things become fixed and how, you know, --

9 MR. IACOPINO: Well, every certificate  
10 is always subject to amendment, and, you know, any owner  
11 or developer or applicant can always come in and move to  
12 amend their certificate. Doesn't mean it's always  
13 granted. But, you know, I think, though, for our purposes  
14 today, you're asking a question "when does it end?"  
15 That's not for me to decide. Ultimately, the Committee  
16 decides that through ruling on things.

17 MR. ROTH: If I can --

18 MR. IACOPINO: But, as far as what we're  
19 here today for, you'll certainly have the opportunity to  
20 get information about if something has changed, so that  
21 the warranty now isn't going to be voided or whatever by  
22 virtue of some increased vegetation around the turbine  
23 pads. You'll have that opportunity. And, then, you can  
24 use that for whatever purposes you want to use it for --

1 MS. LINOWES: Uh-huh.

2 MR. IACOPINO: -- during the course of  
3 the adjudicatory hearing, you know.

4 MS. LINOWES: Okay.

5 MR. IACOPINO: So, there are discovery  
6 requests that you can make along those lines. I'm sorry,  
7 Peter?

8 MR. ROTH: I'm sorry for interrupting  
9 you, though. The thought occurs to me that maybe what she  
10 might be asking about, and, certainly, it seems to me that  
11 this desire to have disclosure to the record that are  
12 going to be submitted and relied upon as kind of a direct  
13 evidence, if you will, is one thing, and identifying that  
14 by a certain date I think is appropriate. But I think all  
15 the parties will want to be able to use parts of the  
16 record for impeachment during cross-examination, and those  
17 will not need to be disclosed. Is that your assumption?

18 MR. IACOPINO: Yes. I would assume that  
19 anything that's going to be, you know, anything that's  
20 just "you said this on a prior day", that's fair game. I  
21 mean, I don't see why it wouldn't be.

22 MR. PACHIOS: Absolutely agree with  
23 that.

24 MR. IACOPINO: Back in 1998 or

1 whenever, --

2 MR. ROTH: Okay. So, you agree with  
3 that?

4 MR. PACHIOS: Oh, I agree a hundred  
5 percent with that.

6 MR. IACOPINO: I mean -- yes. I mean, I  
7 think that that's fair. Because remember, though, is that  
8 that's not being offered as substantive evidence at that  
9 point.

10 MR. ROTH: Right.

11 MR. IACOPINO: It's being offered merely  
12 for impeachment purposes, and to the extent that  
13 impeachment is or becomes an issue in the case. I mean,  
14 I'm not -- you know, normally, in an administrative  
15 hearing, you know, impeachment is less of a weapon than it  
16 may be in a courtroom.

17 And, when we speak about "impeachment",  
18 I'm sorry, Commissioner, --

19 MR. SAMSON: No, no.

20 MR. IACOPINO: -- when we speak about  
21 "impeachment", we're speaking about the use of either  
22 prior statements or some other thing, to basically --

23 MR. SAMSON: Uh-huh.

24 MR. IACOPINO: -- to basically point out

1 a discrepancy in somebody's testimony. Some people might  
2 call it a "lie", some people might call it a  
3 "misunderstanding", some people might call it a "change of  
4 mind". It all depends. But it's -- impeachment is when  
5 you impeach somebody's testimony, it's basically to  
6 undermine its credibility.

7 MR. SAMSON: Okay.

8 MR. IACOPINO: And, there's a difference  
9 between evidence that's offered for the substance of what  
10 it provides and evidence that's just offered to show  
11 "well, somebody doesn't know what they're talking about."

12 MR. SAMSON: Okay.

13 MR. IACOPINO: Okay?

14 MR. SAMSON: Thank you.

15 MR. PACHIOS: So, I'm -- I am in total  
16 agreement with him. And, I think this issue of whether  
17 you can change or come for an amendment to something  
18 that's already been decided is contemplated by the rules,  
19 amendments are contemplated by the rules. You build a  
20 project, and you see, through experience, that something  
21 needs to be changed, and you seek to change it, and maybe  
22 it doesn't have to be changed. But we feel it's very  
23 important, because there is very likely to be another  
24 motion to amend coming up, which -- in order to



1 accommodate a new ski area development at the Balsams.  
2 And, there are -- there's going to be another one of these  
3 proceedings. And, if the decision, and I think we have to  
4 decide this in the course, not of today, but in the course  
5 of this proceeding, the extent to which one is impeached  
6 for simply wanting to change something that's already been  
7 done, because that means that nothing can never be  
8 changed. And, we need to know before we get to the  
9 Balsams issue on that as well.

10 MR. IACOPINO: Well, ultimately, it's  
11 the Committee members themselves who will make the  
12 determination of what weight to give to any kind of  
13 evidence, impeachment or otherwise. And, you know, that's  
14 not something that we can control at this table. They  
15 will decide who they believe, why they believe them, and  
16 whether somebody even was impeached. I mean, that's for  
17 the finder of fact. It's really not something that we can  
18 -- we can determine here.

19 MR. ROTH: I think the issue that you  
20 point to, that I think is one that I raised, whether these  
21 are mutable in the way that you're asking for, is a legal  
22 question, not really an evidentiary or an impeachment  
23 issue. It's a legal question that ultimately, I suppose,  
24 the Committee will answer in this case. And, so, you

1 know, --

2 MR. IACOPINO: You're getting to your  
3 scrambled egg analogy?

4 MR. ROTH: Yes. Yes. My -- only Chuck  
5 Norris can unscramble an egg. And, I don't seem him here  
6 today.

7 (Laughter.)

8 MR. IACOPINO: Yes. And, ultimately,  
9 obviously, that's a decision that the Committee will make,  
10 and they will make it using their best judgment and their  
11 best wisdom. All we can do here is sort of provide the  
12 procedure so that the evidence gets to them. And, that's  
13 what we're going to try and finish doing today.

14 So, to get back to where we had started,  
15 one thing I think has changed, Mr. Pachios, there's a  
16 suggestion that you might have a witness from Fish & Game  
17 and/or the AMC. You had previously indicated you could  
18 have your prefiled testimony in ten days. I'm not so  
19 sure, just from my own experiences, whether that would  
20 still hold, if you're going to look for prefiled testimony  
21 from these folks. So, why don't we start with that date,  
22 and try to set a date that's realistic. Because, rather  
23 than setting dates, and then having people moving to  
24 extend them, set a date that's realistic for you to get

1 your prefiled testimony, including anything from the State  
2 agencies that you might be expecting to provide. And,  
3 then, we can launch off of that date to get the rest of  
4 our schedule at least going. And, then, we can talk about  
5 things like stipulations and other things like that.

6 So, realistically, what would be an  
7 appropriate date do you think you could have the testimony  
8 from Mr. Phillips, Mr. Cyr, and whatever testimony you  
9 might be seeking from, I forget who signed your agreement  
10 from Fish & Game, or Dr. -- I think Dr. Kimball signed.  
11 Did Dr. Kimball sign for AMC?

12 MR. PACHIOS: I don't know. I'd have to  
13 look at it.

14 MR. IACOPINO: I forget who it was. Dr.  
15 Kimball I know was in the original proceeding, though.  
16 But --

17 MR. PACHIOS: So, I don't know. We can  
18 call tomorrow and try to find out. But, you know, let's  
19 put it this way, if you say three weeks, and we can get it  
20 done in a week and a half, we'll get it done in a week and  
21 a half.

22 MR. IACOPINO: Okay.

23 MR. PACHIOS: I mean, we have no reason  
24 to delay anything.

1 MR. IACOPINO: Right. But the thing to  
2 keep in mind is we'll be launching off of that, though.

3 MR. PACHIOS: Okay. Yes.

4 MR. IACOPINO: So, that's why I want  
5 to -- what I was thinking, I was actually thinking more  
6 like 30, 30 to 45 days, only because I know that  
7 sometimes, when you're trying to get things at State  
8 agencies, they've got to go approvals and stuff like that.  
9 So, --

10 MR. ROTH: Mike, is that Glenn  
11 Normandeau's signature?

12 MS. LINOWES: It does look like his.

13 MR. IACOPINO: I don't know. Could be.

14 MS. LINOWES: I'm pretty sure that's a  
15 "G".

16 MR. IACOPINO: Could be. I don't think  
17 he'll be sitting on this, if it is.

18 MR. ROTH: Yes. Is he on this one?

19 MR. IACOPINO: They're all on it,  
20 because it's an amendment.

21 MR. ROTH: Okay.

22 MR. IACOPINO: It's the full Committee.  
23 So -- but I don't know. I can't --

24 MR. ROTH: You don't know whether it was

1 Glenn Normandeau who signed it?

2 MR. PACHIOS: I don't.

3 MR. IACOPINO: I don't have everybody's  
4 signature. Jane has them. But, in any event, so, I was  
5 thinking more like 30 days. I don't know if that's -- if  
6 you think that's fair or not, 30 to 45 days. And, I was  
7 thinking that to benefit you, so that you can get your  
8 ducks in a row with anybody from Fish & Game or AMC that  
9 you need.

10 MR. PACHIOS: I appreciate that. I'm of  
11 a mind that these things have a life of their own and they  
12 can become more or less endless.

13 MR. IACOPINO: Uh-huh.

14 MR. PACHIOS: And, that's a cost for my  
15 client. Because my theory is that the more time for  
16 lawyers to fill, the more expense, because they'll fill  
17 the time. So, I think stricter deadlines are --

18 MR. IACOPINO: So, you mentioned --

19 MR. PACHIOS: -- cheaper for us and  
20 cheaper for the State.

21 MR. IACOPINO: You mentioned "three  
22 weeks", that would be May 22nd?

23 MR. PACHIOS: Yes.

24 MR. IACOPINO: All right. That will be

1 our starting point.

2 MS. LINOWES: I just wanted to ask, what  
3 is the status of the road right now?

4 MR. PACHIOS: I don't know.

5 MR. SAMSON: Probably under water.

6 MS. LINOWES: No. Was it revegetated  
7 back to 12 feet when that failure happened in August?

8 MR. PACHIOS: I don't know. I've  
9 never -- I've never seen the place.

10 MS. LINOWES: Okay. But you, the  
11 Applicant, was under the obligation from the High  
12 Elevation Settlement Plan to revegetate back, motion or  
13 not.

14 MR. PACHIOS: I understand. I'm a  
15 lawyer, not an engineer.

16 MS. LINOWES: Can we get an answer then?

17 MR. PACHIOS: Well, we're going to --  
18 we'll have it all in our testimony.

19 MR. IACOPINO: Let's get their prefiled  
20 testimony. Let's not jump the gun.

21 MS. LINOWES: Well, the reason I'm  
22 asking is, the Applicant stated that there was an urgency  
23 to get this done, this proceeding done, because planting  
24 season is coming up. And, I think that road should be

1 planted back. And, then, you know, they should be on  
2 parallel tracks. That's all I'm asking you.

3 MR. IACOPINO: Well, the certificate  
4 exists as it exists. And, I mean, if they don't -- if  
5 they don't comply with the certificate, they don't comply  
6 at their own risk.

7 MS. LINOWES: Thank you.

8 MR. IACOPINO: So, that's -- I mean, I  
9 don't think that that's an issue in terms of what we're  
10 dealing with today. Could be in the future, but it's not  
11 today. So, --

12 MR. ROTH: I guess this brings to mind  
13 another question or part of the process. And, that is, I  
14 know it's kind of unusual, given where we are, but I think  
15 it would make sense for, whether it includes the Committee  
16 or just the parties, to visit and look at what it is we're  
17 talking about. Because it's difficult to look at the  
18 plans and visualize what it is you have in mind. And, it  
19 would make sense, it seems to me, for us to all go up  
20 there and have your engineer point it out, and tell us  
21 what it is is going to be revegetated, what is not going  
22 to be revegetated, that kind of thing. Show us the  
23 current condition of things. Is that something that you  
24 guys would be willing to accommodate?

1 MR. PACHIOS: Well, it's not our  
2 decision. It's, you know, it would -- oh, you mean just  
3 for you, for you folks, not for the Committee?

4 MR. ROTH: Well, obviously, we can't  
5 uninvite the Committee, if they want to come. But --

6 MR. PACHIOS: No, no, no, no. And, I  
7 wasn't suggesting that you could uninvite them. I really  
8 wasn't. I want to try to persuade you of that.

9 MR. ROTH: You don't have to.

10 MR. PACHIOS: Well, yes. And, I  
11 appreciate that. Look, we would have no problem. That  
12 would be part of discovery. I mean, you can ask for a  
13 view, and that's contemplated in discovery, to look at  
14 things.

15 MR. ROTH: Yes. I'm just suggesting we  
16 build that into the calendar now. That you agree that we  
17 can all have a view, and we build it into the calendar.

18 MR. IACOPINO: Okay. But we still got  
19 to start with their prefiled testimony.

20 MR. ROTH: Yes.

21 MR. IACOPINO: So, May 22nd for the  
22 Applicant's prefiled testimony. In terms of the type of  
23 discovery that the other parties might want to conduct,  
24 does any party anticipate the need to set a deadline for



1 written data requests? Or, are you happy to just, as we  
2 have done in many dockets, just to come to a tech session,  
3 without the intermediate step of data requests, and then  
4 have a deadline after the tech session by which any  
5 requests for documents have to be provided? I've actually  
6 found that that works best, because usually what happens,  
7 you make a data request, something gets provided, then you  
8 get to the tech session and you're like "That's not really  
9 what I was looking for. I was looking for this." And,  
10 then, they wind up getting that to you, you know, seven  
11 days later anyway. I mean, but, if the parties want to  
12 issue written data requests, obviously, we can accommodate  
13 that as well.

14 MR. ROTH: Without having seen the  
15 prefiled testimony, it's impossible to answer that  
16 question, other than "yes, we should have data requests."

17 MR. IACOPINO: Okay.

18 MR. ROTH: Typically, in the typical  
19 case, where we forgo the data requests, in lieu of, you  
20 know, in favor of a tech session and then follow-ups, we  
21 have had the prefiled testimony.

22 MR. IACOPINO: Well, that's because it's  
23 been in applications. I mean, --

24 MR. ROTH: Yes. So, we just don't have

1 that here. And, I can't think of why I wouldn't want it.

2 MR. IACOPINO: All right. So, is 14  
3 days after receipt of the prefiled testimony sufficient  
4 for you to figure out your data requests and submit them  
5 to the Applicant?

6 MR. ROTH: Yes, for me.

7 MR. IACOPINO: Okay. Anybody have any  
8 problems with that? That would mean that data requests to  
9 the Applicant would be due on I think it's May -- I'm  
10 sorry, June 5th.

11 MR. ROTH: And, Harold, just so you  
12 don't think I'm completely unreasonable, I could have, but  
13 I've chose not to, asked for that date to fall after I've  
14 hired an expert. But I think it's -- I can fairly come up  
15 with data requests. And, I won't put that off until after  
16 I've hired an expert.

17 MR. IACOPINO: And, usually, data  
18 requests are usually requests for documents. At least in  
19 my experience, that's been the ones that have made the  
20 most difference. And, any problems with answers within 14  
21 days, which would be the 19th?

22 MR. PACHIOS: No.

23 MR. IACOPINO: Okay. Let's talk about  
24 this expert thing, Peter, since we've got to submit

1 this --

2 MR. ROTH: And, you said the 19th of  
3 June for answers?

4 MR. IACOPINO: Yes. Answers to, yes.  
5 If you get prefiled testimony on May 22nd, when do you  
6 think you would be able to submit your motion for approval  
7 of an expert or experts, whatever?

8 MR. ROTH: Just, you know, to --

9 MR. IACOPINO: I know you don't know  
10 what's in the testimony.

11 MR. ROTH: Exactly.

12 MR. IACOPINO: You might have an idea,  
13 though, by reading the motion.

14 MR. ROTH: Yes. And, the bigger problem  
15 is finding somebody. And, you know, and I can start that  
16 process to a certain extent now. But I don't like to make  
17 this too cramped for myself, you know, because --

18 MR. IACOPINO: That's why -- that's why  
19 I'm asking you.

20 MR. ROTH: -- in some cases, I don't  
21 even agree to it. In some cases, I insist on having it  
22 open.

23 MR. IACOPINO: Well, that's why I'm  
24 asking you.

1 MR. ROTH: Yes, yes, yes. And, so, what  
2 I'm saying is, you know, to be fair to myself and to my  
3 expert, well, I guess my expert doesn't play in, but, to  
4 be fair to myself on this question, I would need at least  
5 30 days from the time I get the prefiled.

6 MS. LINOWES: For the data requests,  
7 responses to data requests?

8 MR. ROTH: The 19th?

9 MS. LINOWES: Yes.

10 MR. ROTH: That would be okay, too. I  
11 mean, I don't know that that, you know, there's any magic  
12 to those particular -- the confluence of those dates,  
13 but --

14 MR. IACOPINO: Now, you've lost me.  
15 June 19th is okay, is that what you're saying?

16 MR. ROTH: June 19th is okay, or June  
17 21st is okay, too. And, we'll see what date --

18 MR. IACOPINO: June 21st would be a  
19 Saturday.

20 MR. ROTH: How about the 20th?

21 MR. IACOPINO: June 20th? Okay.

22 MS. LINOWES: I'm confused. I'm  
23 confused. So, you don't have to have the responses to  
24 your data responses to put the prefiled testimony in?

1 MR. ROTH: Oh, yeah, I do. But this  
2 isn't about when I file my prefiled.

3 MR. IACOPINO: This is on an expert.

4 MR. ROTH: This is when I file a motion  
5 to hire an expert.

6 MS. LINOWES: Oh, I'm --

7 MR. ROTH: Okay.

8 MS. LINOWES: Apologies. Okay.

9 MR. IACOPINO: Okay.

10 MR. ROTH: So, can we make it June 20th?

11 MR. IACOPINO: June 20th is fine. That  
12 would make June 30th as the objection, if you have an  
13 objection to his motion. Okay. All right.

14 All right. Now, this is where I  
15 anticipate that we're going to have some problems.  
16 Because, if the responding parties are going to file  
17 prefiled testimony -- I'm sorry. Wait. We still have to  
18 do a tech session and get through this -- what's that?

19 MR. ROTH: Oh, never mind. I was going  
20 to say that this was a little sideshow, my expert.

21 MR. IACOPINO: Right.

22 MR. ROTH: But it is important.

23 MR. IACOPINO: I understand.

24 MR. ROTH: Because I don't want to come

1 to the tech session without an expert.

2 MR. IACOPINO: Well, and I don't want to  
3 get all the way to a point where there's a tech session,  
4 and then we have to delay things so that we can get an  
5 expert. I'm glad that it's on the table and we're dealing  
6 with it.

7 So, a tech session would be the next  
8 thing that we would schedule there. Assuming that we can  
9 get an order by July 10th or so on the motion for an  
10 expert, giving the presiding officer about ten days to  
11 rule, if there's any objection, what do you think? Two  
12 weeks?

13 MR. ROTH: For the tech session?

14 MR. IACOPINO: Uh-huh.

15 MR. ROTH: Yes.

16 MR. IACOPINO: Two weeks after the 10th?  
17 So, the 24th of July. All right. Having completed a tech  
18 session of the Applicant's witnesses, how much time are  
19 you going to want after that to prefile your testimony?

20 MR. ROTH: Assuming I have an order  
21 appointing somebody by July 10th, --

22 MR. IACOPINO: Uh-huh.

23 MR. ROTH: -- I could have, you know, I  
24 could hope to have testimony by, say, August 15th.

1 MR. IACOPINO: How about August 8th?

2 MR. ROTH: Okay.

3 MR. IACOPINO: So, that -- and, that  
4 would be for all of the other parties that are not the  
5 Applicant. Is that date okay with Windaction?

6 MS. LINOWES: Yes. Mike, I do not  
7 anticipate filing prefiled testimony on this. But there  
8 are a number of questions that I would like answered in  
9 advance of the -- and, so, I would like to participate in  
10 the data request process.

11 MR. IACOPINO: Oh, of course.

12 MS. LINOWES: Is that a problem?

13 MR. IACOPINO: Yes. These deadlines  
14 apply to everybody. And, I'm sorry, Commissioner, I don't  
15 know if you understood that.

16 MR. SAMSON: Yes, I do.

17 MR. IACOPINO: But the data request  
18 deadline and the answer deadline and all that applies to  
19 all -- all of the other parties. I'm sorry.

20 MS. LINOWES: Okay.

21 MR. IACOPINO: Peter and I are bantering  
22 back and forth.

23 MR. ROTH: Yes. The only way the 8th  
24 works, though, is if I have an order by the 10th.

1 MR. IACOPINO: I understand.

2 MR. ROTH: That's just -- that's really  
3 hard. Because we ran into this in Antrim, and it took too  
4 long. You know, it's not because -- it's just the delay  
5 in getting the order made it impossible for me to get my  
6 reports in in the time that we had agreed on in advance.  
7 That's all.

8 MR. IACOPINO: So, if they file their  
9 prefiled testimony by August 8th, do you anticipate --  
10 when would you want to issue your data requests to them,  
11 if you choose to do so?

12 MR. PACHIOS: A week.

13 MR. IACOPINO: Okay.

14 MR. PACHIOS: You know, look, maybe --  
15 one of the things that, this is not off, I want you to  
16 finish this, but I'm willing to accommodate whatever you  
17 want to do. The longer that this process, not this  
18 process, but the entire process goes on, this is an  
19 amendment --

20 MR. IACOPINO: I understand.

21 MR. PACHIOS: -- from 12 feet to  
22 16 feet. That's what it is. And, so, the more resources  
23 that are employed and the more money that is spent, both  
24 by my client and I assume the State pays Mr. Roth, and the



1 SEC, the more I have to think about whether, and I just  
2 want to say this up front so nobody says "well, you never  
3 said that", the more I have to do, whether an amendment  
4 makes any sense to anyone, the amendment resulted from the  
5 fact that New Hampshire Fish & Game said, you know, "you  
6 plant these seedlings, and then you, if you have to bring  
7 the equipment up, you have to remove them and start it all  
8 over again. And, that's not a good way to get sustained  
9 growth." It was not my client's --

10 MS. LINOWES: Can I interrupt here?

11 Fish & Game is not here to validate your statement. I  
12 would really rather that part of the proceeding --

13 MR. PACHIOS: I'd like to just finish  
14 what my understanding is.

15 MR. IACOPINO: Go ahead, Mr. Pachios.

16 MR. PACHIOS: Okay. So, you know, the  
17 alternative here is, you know, don't change it. That's  
18 pretty simple. And, my client can certainly live very  
19 well without changing it. It's cheaper. So, I just want  
20 to -- let's continue, but I want people to understand that  
21 they may hear back from me and say "well, we came up to  
22 Lancaster and had that prehearing conference, and now  
23 we're not going to do it."

24 MR. IACOPINO: All right.

1 MS. LINOWES: Can I add to that then?

2 MR. IACOPINO: Yes, Lisa.

3 MS. LINOWES: Because your motion and  
4 your follow-up brief or response to Peter Roth minimizes  
5 the issue over widening this road to 16 feet. And, you  
6 weren't there throughout the proceedings when there was  
7 significant discussion, issues around this project are  
8 pertaining to environmental impacts. And, they're  
9 significant up there. So, I would not make light of this  
10 road going down to -- you know, widening it from 12 to 16  
11 feet and calling it "no big deal." And, that is  
12 effectively what you are doing, and I take issue with  
13 that.

14 MR. IACOPINO: All right, but -- well,  
15 he's talking about whether they should do it at all or  
16 not. So, that's -- it's really just a different issue. I  
17 don't think he was trying to address environmental  
18 concerns as an expert. He was talking about the practical  
19 realities of his client's budget. I mean, that's really  
20 what --

21 MR. ROTH: Yes. And, I understand that.  
22 And, if I could make a response of some kind, and perhaps  
23 not as aggressive as Ms. Linowes. But -- and, it's this.  
24 And, as I look at this, you know, the letter that

1 Mr. Iacopino sent you last summer said "hey, get in touch  
2 with Fish & Game, AMC, and Roth and see what you can work  
3 out." And, what I got was, you showed up in my office the  
4 day before or the day that you filed your amendment saying  
5 "hey, what do you think?" And, you showed it to me the  
6 night before. That's not really effectively involving me  
7 in the consideration of the process.

8 That said, I'm still willing to think  
9 about and talk about some other way to resolve this, that  
10 doesn't involve, you know, six months' worth of process,  
11 and tens of thousands of dollars worth of legal fees and  
12 expert opinions and fees.

13 And, so, I don't like making agreements  
14 with developers. I just don't. It's not a -- I don't  
15 necessarily think it's in the public interest. But this  
16 may be a place where there is some public interest in  
17 doing that. And, you know, and, so, I guess I would put  
18 that out there that I'm not adverse to coming up with some  
19 sort of an accommodation with you. And, you know, Lisa is  
20 free to object and throw rocks at me for saying that. But  
21 it is the kind of thing that I think this case may  
22 actually lend itself to.

23 MR. PACHIOS: Okay. Thank you. Well,  
24 that's a -- I think that's a very positive, helpful

1 statement. And, I will respond to it affirmatively. And,  
2 we'll do whatever we can to make sure that you and Ms.  
3 Linowes and the Commissioner have all the information that  
4 you need in order to assess this and the reasons for it.

5 MR. ROTH: And, that --

6 MR. PACHIOS: And, I'll do it  
7 informally. Nobody has to give us a data request or  
8 anything else.

9 MR. ROTH: And, that's very helpful and  
10 positive. But it may take more than just convincing me  
11 that this is a good idea. It may be that, as part of  
12 this, I will want some other consideration made in order  
13 to reach that kind of a settlement.

14 MR. PACHIOS: Uh-huh.

15 MR. IACOPINO: And, we can talk about  
16 settlement possibilities in a minute. Let's -- we're  
17 three-quarters of the way through a schedule. So, let's  
18 gets the schedule down.

19 MR. ROTH: What if we could settle it  
20 now, we wouldn't need the other quarter of the schedule?

21 MR. IACOPINO: Well, then settle it.

22 (Laughter.)

23 MR. IACOPINO: Okay? But, if the data  
24 requests to the other parties are sent out on August 15th,

1 we gave the Applicant two weeks to answer theirs, so we  
2 would give you two weeks to answer yours. So, that would  
3 be that your answers would be due on August 29th.

4 MR. ROTH: I'm sorry, Mike. What was  
5 the date for their data requests?

6 MR. IACOPINO: Their data request  
7 deadline was August 15th, and that is a Friday. Two weeks  
8 from that is August 29th, which is also a Friday. The  
9 next thing there to be scheduled would be a tech session  
10 with your folks. Do you have any problem doing it one  
11 week later, September 5th?

12 MR. PACHIOS: No. It's no problem.

13 MR. IACOPINO: Now, by the way, with  
14 these tech sessions, I have to get a room for us. So,  
15 they may -- the date may go one day or two days in either  
16 direction, based on availability of a conference -- of an  
17 appropriate conference room for whatever.

18 MR. ROTH: So, you said "September 5th"?

19 MR. IACOPINO: September 5th, yes.  
20 Okay. Usually, with tech sessions, what we've done is  
21 that, if there are data requests that are outstanding at  
22 the end of the tech session, seven days to provide them to  
23 the party that's requesting them. I don't see any reason  
24 to deviate from that. Does anybody?

1 (No verbal response)

2 MR. IACOPINO: Okay. All right. So,  
3 the only other two things would be a deadline for any  
4 supplemental testimony, and then sort of a target date for  
5 the start of the actual adjudicative hearing. So, if  
6 we're done with the last tech session on September 5th,  
7 seven days after September 5th any documents that were due  
8 and owing would be out, that would be September 12th.  
9 And, two weeks for supplemental testimony would bring us  
10 to September 26th. Anybody have any objection with that?

11 MR. ROTH: Oh, the 26th of --

12 MR. IACOPINO: September. I'm sorry,  
13 did I say --

14 MR. ROTH: Yes. Probably not. My issue  
15 is, I can't remember whether it's the week of the  
16 14th/15th, that week, or the following week, I have a -- I  
17 have to be out of the office for much of the week.

18 MR. IACOPINO: Okay.

19 MR. ROTH: I'm pretty sure it's the week  
20 of the 14th/15th/16th, but I'm not positive.

21 MR. IACOPINO: So, is the 26th okay  
22 then, if that's the week?

23 MR. ROTH: Well, if I'm correct about  
24 the 14th/15th week, then the 26 is okay.

1 MR. IACOPINO: Okay.

2 MR. ROTH: But, if I'm not, then the 26  
3 is problematic. Could we go, just to be safe, completely  
4 safe, could we go to October --

5 MR. IACOPINO: Three.

6 MR. ROTH: -- 3rd?

7 MR. IACOPINO: Yes. Okay.

8 MR. ROTH: Is that all right with you?

9 MR. PACHIOS: Yes. Any date's all  
10 right, because I don't ever have things booked that far in  
11 advance anyway, so --

12 MR. IACOPINO: And, we're going to --  
13 and, then, we'll have an adjudicatory hearing --

14 MR. ROTH: So, all parties  
15 supplemental --

16 MR. IACOPINO: All parties supplemental  
17 testimony October 3rd. And, then, I would like to see the  
18 Committee hear this case within two weeks after that, or  
19 two weeks after that, which would put us at the 17th.  
20 That's a Friday. So, it's more looking like October 20th.

21 MR. ROTH: October 20th?

22 MR. IACOPINO: Yes. And, of course,  
23 obviously, I can't bind them on that. They will tell me  
24 when they're available. But I'll be shooting in that

1 direction, so that everybody has sufficient time to review  
2 the supplemental testimony and be ready for a hearing.

3 All right. Stipulations. You were just  
4 about to settle the case.

5 MR. PACHIOS: We have prepared  
6 stipulations. I have a sense -- well, first of all, we're  
7 going to pass them out. Didn't expect anybody to agree to  
8 anything today. You got to read them, think about them.

9 MR. IACOPINO: Uh-huh.

10 MR. PACHIOS: But we thought we'd start  
11 the process with stipulations. And, whether or not  
12 anybody agrees to them, we'll find out in time.

13 MR. IACOPINO: Okay.

14 MR. PACHIOS: And, so, we'll give you  
15 each a set of these stipulations.

16 (Atty. Warner distributing documents.)

17 MR. IACOPINO: Thanks.

18 MR. ROTH: For my own part, I'll be  
19 happy to look at them. And, I may be able to agree to  
20 stipulate to some of these things, I just don't know.

21 MR. PACHIOS: Yes. You'll have to read  
22 them and think about them.

23 MR. ROTH: Yes.

24 MR. IACOPINO: Was there anything that



1 anybody else had to offer with regard to potential  
2 stipulations in this case?

3 (No verbal response)

4 MR. IACOPINO: I know it's difficult  
5 when it's this early on.

6 MR. ROTH: Do you want to build in a  
7 date for doing it?

8 MR. IACOPINO: If you guys are amenable  
9 to that. I mean, it's not typically something that we  
10 would require. I mean, you could stipulate up to the  
11 day of -- you could stipulate after it starts. So, --

12 MR. ROTH: Yes. Oh, of course. I was  
13 just thinking it would maybe make it more orderly if we  
14 did it before.

15 MR. IACOPINO: But it might be a nice  
16 courtesy for them to know if you're going to stipulate  
17 sooner, rather than later.

18 MR. ROTH: Yes. And, so, I'm thinking  
19 perhaps by the date of the supplemental testimony?

20 MR. IACOPINO: That's fine. You want to  
21 stipulate at any time, you can. You know, I thought you  
22 were going to suggest something much sooner. I mean, --

23 MR. ROTH: Well, it just seems to me  
24 that, whether I stipulate to a particular fact, you know,

1 obviously, I could stipulate to, you know, the financial,  
2 managerial, and technical capacity of the Applicant right  
3 now, but I don't know how relevant that is. There may be  
4 other facts that arise, and that we learn more about  
5 during the process, that I could stipulate to, that I  
6 would not agree to now, or even, you know, after having  
7 looked at them and thought about them. So, --

8 MR. IACOPINO: I understand. I just  
9 misunderstood what you were trying to build into the  
10 schedule, that's all.

11 MR. ROTH: No. Just a, you know, a date  
12 by which, if we're going to do stipulated facts, we submit  
13 them. And, I think that, if, for example, you know, the  
14 Applicant and Counsel for the Public were to agree to  
15 stipulated facts by a certain date, and Ms. Linowes, for  
16 example, didn't agree to those stipulated facts --

17 MR. IACOPINO: Uh-huh.

18 MR. ROTH: -- I think it's fair to her  
19 to know what, you know, what the game is going to be like  
20 before we walk into the hearing.

21 MR. IACOPINO: Right. But -- it is.  
22 But it also shouldn't limit the parties. I mean, you can  
23 stipulate on the morning of trial, if you'd like. And,  
24 that has happened, and it's not prohibited by our rules.

1 But, in any event, sure, supplemental -- I mean, the thing  
2 is, is they have proposed these stipulations. And, I  
3 don't know if you're talking about just these stipulations  
4 that they propose or all stipulations?

5 MR. ROTH: No, any. Any, yes. Because  
6 I may propose some back.

7 MR. IACOPINO: I mean, it seems  
8 reasonable. Stipulations --

9 MR. ROTH: And, they may well agree to  
10 them.

11 MR. IACOPINO: Stips by 10/3.

12 MS. LINOWES: I'm sorry, Mike. This is  
13 a little bit new to me. This --

14 MR. IACOPINO: Well, you'll have the  
15 opportunity to read them, --

16 MS. LINOWES: Uh-huh.

17 MR. IACOPINO: -- and respond, tell them  
18 if, you know, if you do agree with any of their proposed  
19 stipulations. If you want to submit proposed stipulations  
20 to them, you can as well. Obviously, you should submit it  
21 to all the parties, because there's more than two parties  
22 here.

23 MS. LINOWES: But, in reading this, the  
24 stipulations, we're simply agreeing --

1 MR. IACOPINO: You're agreeing that, if  
2 everybody agrees, if all the parties agree, then you're  
3 basically saying to the Committee "well, you can take this  
4 as a fact." I haven't read these.

5 MS. LINOWES: Okay.

6 MR. IACOPINO: I don't know what they  
7 say.

8 MS. LINOWES: Okay.

9 MR. IACOPINO: "You can take this as a  
10 fact." Okay? Now, the Committee, on its own hand,  
11 doesn't have to. The Committee could look at it, I mean,  
12 you could say, you know, you could all stipulate that, you  
13 know, that "New Hampshire is the Green Mountain State",  
14 and I doubt that the Committee is going to, you know,  
15 approve such a stipulation. However, I doubt that that's  
16 what these are. I mean, these are, I assume, related to  
17 the issues in the case. And, hopefully, they take some  
18 things that might otherwise be litigated, or not  
19 "otherwise be litigated", but might mistakenly be  
20 litigated off the table.

21 MR. ROTH: By stipulating to a fact,  
22 you're not necessarily agreeing --

23 (Court reporter interruption.)

24 MR. ROTH: By stipulating to a fact, it

1 doesn't necessarily mean that you agree with them that it  
2 means a particular thing. You're free to argue the  
3 stipulated fact for any point that you think it supports.

4 MS. LINOWES: Okay. Okay. So, --

5 MR. ROTH: So, for example, if they  
6 think stipulating to financial, managerial and technical  
7 capacity of the Applicant means that "they're a good guy",  
8 that doesn't necessarily mean that you agree with that.  
9 You could stip -- you could take that same stipulation and  
10 say "this means that they have plenty of money and they  
11 can do what is necessary" --

12 MS. LINOWES: Okay. Got it.

13 MR. IACOPINO: -- "to make this right."

14 MS. LINOWES: Okay.

15 MR. ROTH: You see what I'm saying?

16 MS. LINOWES: Yes. So, if I want to  
17 stipulate the point that "it's not possible to vegetate  
18 turbine pads", is that something that I would put here?

19 MR. ROTH: You'd have to get them to  
20 agree to it.

21 MS. LINOWES: Correct.

22 MR. IACOPINO: Well, you could do the  
23 same thing that they have done. They have written the  
24 stipulations out. And, I think you have probably seen

1 this in other contexts where there's been an agreement,  
2 they weren't called "stipulations", but an agreement, like  
3 the High Elevation Mitigation Settlement Agreement.

4 During the course of the original proceedings here, those  
5 parties that signed off on that worked, and you knew what  
6 they were doing.

7 MS. LINOWES: Yes.

8 MR. IACOPINO: And, they came up with an  
9 agreement. They passed it around to everybody who was  
10 involved. Some people have -- some people either didn't  
11 object, some people didn't agree specifically and  
12 objected. And, you know, the Committee ultimately  
13 determined to accept that Agreement and make it part of  
14 the Certificate.

15 This is simpler, although not quite the  
16 same, because it would only be with respect to certain  
17 facts. If all the parties agree that "New Hampshire is  
18 the Granite State", there's really no reason for the  
19 Committee to not accept that. And, you know, in the  
20 section of the order that deals with the facts, it will  
21 say "New Hampshire is the Granite State."

22 MS. LINOWES: Uh-huh.

23 MR. IACOPINO: "See Stipulation  
24 whatever", or whatever.

1 MS. LINOWES: Okay. And, I have one  
2 question then, going -- adding onto that. When the  
3 Committee ultimately, if this goes to an adjudicative  
4 process, and is the Committee ultimately going to be  
5 following the "findings" section of the laws as written  
6 today? Ultimately, it has to decide whether or not this  
7 change --

8 MR. IACOPINO: Something that you're  
9 going to have to argue to the Committee what their -- what  
10 aspects of 162-H ought to apply. Because, quite frankly,  
11 the statute right now does not say -- does not say  
12 anything specific about what the Committee should take  
13 into effect when determining an amendment to a  
14 certificate.

15 MS. LINOWES: Got it.

16 MR. IACOPINO: I think that, in the  
17 past, they have, I mean, you should read the old orders.

18 MS. LINOWES: Yes.

19 MR. IACOPINO: In the past, they have  
20 looked at whether or not the amendment is consistent with  
21 the findings and purposes of the statute --

22 MS. LINOWES: Yes.

23 MR. IACOPINO: -- and the findings that  
24 were made in that particular case.

1 MS. LINOWES: Okay.

2 MR. IACOPINO: But I can't tell you that  
3 there's a place in the statute that says that that's what  
4 they're going to do.

5 MS. LINOWES: Okay.

6 MR. ROTH: And, as much as I would like  
7 to see otherwise, I will -- I would gather -- venture a  
8 safe bet that, if we tried to put that issue in front of  
9 the Committee for a decision now, or sometime in the near  
10 future, you would not get it.

11 MS. LINOWES: Okay. Okay. That's fair.

12 MR. ROTH: So, it's guesswork, until  
13 they actually sit down and deliberate and decide.

14 MS. LINOWES: Okay.

15 MR. IACOPINO: All right. Is there any  
16 other issues that people think we should address here  
17 today that may advance the ball?

18 MS. LINOWES: Oh, there's only --

19 MR. IACOPINO: You have a question?

20 MS. LINOWES: I don't know if this will  
21 advance, but it certainly would be helpful. There are at  
22 least three documents that I don't think the Committee has  
23 access to, but has been part of what Fish & Game and the  
24 Applicant have been working with. And, one is the



1 Revegetation Plan. I don't think anyone has it, any one  
2 of us of the parties has a copy.

3 MR. IACOPINO: Actually, she's correct.  
4 Iryna and I were looking for it before we came here. The  
5 actual -- there was the High Elevation Settlement --  
6 Mitigation Settlement Agreement. And, in the -- in the  
7 decision, it references the "Revegetation Plan was going  
8 to be designed after construction".

9 MR. PACHIOS: This is back in 2009?

10 MR. IACOPINO: Yes. And, I can't  
11 find --

12 MR. WARNER: With New Hampshire Fish &  
13 Game, is that right?

14 MR. IACOPINO: I'm sorry? Yes, with  
15 Fish & Game. I cannot find that plan in at least what we  
16 have electronically.

17 MR. WARNER: Yes.

18 MR. IACOPINO: I have not actually gone  
19 over to DES and looked in the paper file yet. It may  
20 have -- it may have been filed there. But I suspect that  
21 it wasn't. And, there was -- this is something we run  
22 into a lot. There was nothing in the order that actually  
23 said "file it with the Committee" either. So, yes, that  
24 would be helpful, if -- you guys should have it, I assume,

1 if you could --

2 MR. PACHIOS: Well, we are going to look  
3 for it. Whether we -- we have it is another issue, --

4 MR. IACOPINO: I understand.

5 MR. PACHIOS: -- because, of course, we  
6 bought this Project.

7 MR. IACOPINO: I understand.

8 MR. PACHIOS: And, so, what we -- we'll  
9 first check with our own people, and then I will check  
10 with --

11 MR. IACOPINO: All right.

12 MR. PACHIOS: Who represented Granite  
13 when they --

14 MR. IACOPINO: Susan Geiger.

15 MR. ROTH: Orr & Reno.

16 MR. IACOPINO: Yes.

17 MR. PACHIOS: Who was it?

18 MR. ROTH: Orr & Reno.

19 MR. PACHIOS: Orr & Reno? Yes. And,  
20 then, I'll check with Orr & Reno, because they may have  
21 it, too.

22 MR. ROTH: Pip Decker has it, I would  
23 guess.

24 MR. PACHIOS: Huh?

1 MR. ROTH: Pip Decker.

2 MR. PACHIOS: Yeah.

3 MR. ROTH: Is he around still?

4 MR. PACHIOS: We had nothing to -- no.

5 MR. ROTH: Because I thought that he was  
6 going to stay.

7 MR. PACHIOS: He worked for them.

8 MR. ROTH: Yes. But I thought he was  
9 going to stay, after you guys --

10 MR. PACHIOS: Yeah. I remember that at  
11 the time, when we transferred the permit, discussion about  
12 that.

13 MR. ROTH: Yes.

14 MR. PACHIOS: But I don't know whether  
15 that -- I'll have to check, Peter, and see with that. But  
16 we'll go outside our own client to whether we can find it.

17 MR. IACOPINO: And, what we're -- what  
18 we're actually referring to would be the original High  
19 Elevation Revegetation Plan, --

20 MR. PACHIOS: Yes.

21 MR. IACOPINO: -- as opposed to the High  
22 Elevation Mitigation Settlement.

23 MR. PACHIOS: Yes. One would assume  
24 that, when we bought the Project, they turned over to us

1 everything in their files. But we have to ascertain  
2 whether that actually happened.

3 MS. LINOWES: I did speak with someone  
4 at Fish & Game, and did mention the documents, that it  
5 absolutely exists. And, there may be amendments to it  
6 over time. So, I know that something is out there.

7 MR. IACOPINO: I have a recollection of  
8 seeing something, but Iryna pointed out to me that I may  
9 be confusing it with the two documents. But we went back  
10 and looked electronically, couldn't find anything. But I  
11 haven't had Jane go through the paper file yet.

12 MS. LINOWES: Okay.

13 MR. IACOPINO: So, it could be that  
14 something got, especially if it -- depends on when it was  
15 filed after the close of the other proceeding, --

16 MS. LINOWES: Uh-huh.

17 MR. IACOPINO: -- whether anybody ever  
18 posted it. Well, we know they didn't post it on the  
19 website.

20 MS. LINOWES: Right.

21 MR. IACOPINO: And, didn't send it to me  
22 via e-mail. So, --

23 MS. LINOWES: And, going along with  
24 those, there is reference in the transcripts of a "Post

1 Construction Monitoring Plan", for the -- this would be  
2 for the bird, bat, and other wildlife impacts. And, the  
3 statement in the testimony, and I have it here, but I  
4 won't bother you with it, but it says "we would have to  
5 look at the Post Construction Monitoring Plan to see  
6 whether or not -- areas where we would rather not be  
7 vegetated, because it would interfere with that, with the  
8 post construction monitoring." So, what I'm getting at is  
9 I don't have to see the Monitoring Plan, but I do think it  
10 should be part of the Committee's record. But I would  
11 like to know if there is anything in that record that  
12 prohibits certain kinds of vegetation at this point.

13 And, the third document would be the  
14 safety document, or I'm not sure if I'm giving it the  
15 right name, but the safety access --

16 MR. ROTH: The plan with the County  
17 Commissioners?

18 MS. LINOWES: Yes.

19 MR. PACHIOS: The 1,300 foot buffer?

20 MS. LINOWES: Yes. Well, I know that's  
21 in the Certificate itself. But, if that document -- if  
22 there's anything in that document that talks about  
23 vegetation and limiting access to the -- to the extent  
24 that it's going to be brought up and interfere with any

1 further -- any changes to the vegetation.

2 MR. IACOPINO: Just so -- I think that  
3 there were two phases to the post construction monitoring.  
4 I think that both have been completed. Because I know  
5 that we've actually just got it recently, a bill from Fish  
6 & Game that got sent to your client to pay, in accordance  
7 with those plans. I do believe there was -- the original  
8 one was filed sometime ago, but there was a second phase  
9 of it --

10 MS. LINOWES: Okay.

11 MR. IACOPINO: -- that was I guess  
12 relatively recently completed. And, if you recall, they  
13 were supposed to pay Fish & Game a certain amount of  
14 money.

15 MS. LINOWES: Yes.

16 MR. IACOPINO: Fish & Game has invoiced  
17 that amount of money. I think it's totaled out now.  
18 So, --

19 MR. ROTH: One of the things that I  
20 would suggest, in terms of broaching settlement, is that,  
21 at least as far as I'm concerned, I think it would be  
22 useful for me to have a look at all of the post  
23 construction monitoring and the post construction wildlife  
24 reports, the revegetation plan, and some of the background

1 information about the revegetation issues and the road  
2 use. Because what I'm -- I'll just be right up front  
3 about it. One of the things that I'm thinking about is  
4 whether, as part of -- as an accommodation and in the  
5 public interest, that the Applicant undertake  
6 additional -- an additional study or some additional  
7 consideration, especially with respect to bats. And, I  
8 know you, right now, you're not under any compulsion to do  
9 that. And, that's why I suggest this as a possible  
10 settlement avenue. In order to do that, though, I need to  
11 see the documentation about the wildlife surveys that have  
12 been done since the Project began construction and  
13 operation. And, then, I think it makes sense for anybody  
14 who wants to to sit down with Fish & Game and have a  
15 conversation about that and see if there's something that  
16 can be done.

17 So, that's where I'm headed. I'm not  
18 going to, you know, hide my cards here about that sort of  
19 thing. And, it seems to me that, since this Project was  
20 built, there has -- it has been shown that, and I don't  
21 know whether it's this Project or not, but that projects,  
22 in general, are having a very large impact on bat  
23 populations and bat species.

24 MR. PACHIOS: Wind projects?

1 MR. ROTH: Yes, wind projects.

2 MR. PACHIOS: Yes.

3 MR. ROTH: And, that there's actually a  
4 very simple way for the project operator to deal with that  
5 in a very simple and effective way. And that, in the  
6 State of Maine, this is almost, you know, a requirement,  
7 for, in fact, I believe Fish & Wildlife in Maine, it is a  
8 requirement. And, so, I would like to have a conversation  
9 and see if there is some way we can get that requirement  
10 in place here with this Project.

11 MR. IACOPINO: What's the simple  
12 requirement that Maine has?

13 MR. ROTH: Curtailment.

14 MR. PACHIOS: What is it?

15 MR. ROTH: It's the low -- the low  
16 cut-in speed curtailment. What they do is they study the  
17 turbines, they identify turbines that have a particular  
18 propensity to kill bats. And, then, they develop a plan,  
19 using the software for the machine, to raise the cut-in  
20 speed of the turbine. Apparently, a large proportion of  
21 bats that are killed by wind turbines are killed at low  
22 speeds. And, so, what they have discovered is that, if  
23 the cut-in speed, that is the speed of the wind at which  
24 the turbine is allowed to start spinning, is raised, they



1 can save bats' lives. And, so, this is -- this is an  
2 economic issue for your client, because the -- you're  
3 getting wind and energy out of the low speed, but there's  
4 a negotiation, somewhere between 5 meters per second and  
5 what is it, like 9 meters per second?

6 MS. LINOWES: I think so.

7 MR. IACOPINO: And, there's room in  
8 there, that I think most responsible wind developers will  
9 agree, that they can raise that cut-in speed a little bit  
10 without hitting their bottom line too hard, and perhaps  
11 not go as far as, you know, the Bat Conservation  
12 International would recommend, but that we can reach a  
13 point in there.

14 The problem is, is I don't have enough  
15 information about whether, you know, there are particular  
16 turbines in this project that are having an impact on  
17 bats, and whether -- or whether it's universal, or whether  
18 you have no impact at all. I don't know. I mean, I have  
19 very little scant information about that, and I would need  
20 that information to start that discussion.

21 And, I think that's a -- that's the kind  
22 of thing that, if we could build that into a condition to  
23 your Certificate, in addition to this kind of thing, I  
24 might be able to work my way towards a settlement.

1 MR. PACHIOS: Okay.

2 MR. ROTH: As long as I understood these  
3 issues a little better, and we got to something along  
4 those lines.

5 MS. LINOWES: I think that's something I  
6 could agree to, too. And, it is, in Vermont, is also it's  
7 becoming a standard for their --

8 (Court reporter interruption.)

9 MS. LINOWES: It's become a standard  
10 condition of the certificates in the State of Vermont.

11 MR. PACHIOS: Okay. Well, we'll get  
12 with him.

13 MR. IACOPINO: All right. Any other  
14 issues, in terms of advancing settlement or stipulations?

15 MR. PACHIOS: I have no other ones at  
16 this time, because we want to drive to Portland, and it's  
17 a long ride.

18 MR. IACOPINO: You want to be home for  
19 dinner, huh?

20 MR. PACHIOS: And, I'm old. Huh?

21 MR. IACOPINO: You want to be home for  
22 dinner?

23 MR. ROTH: He's driving.

24 MR. PACHIOS: No, I drove.

1 MR. IACOPINO: I saw him drive,  
2 actually.

3 MR. SAMSON: Mike, if I could?

4 MR. IACOPINO: Yes, sir.

5 MR. SAMSON: Being new to this process,  
6 it's somewhat disturbing to me, as a civilian, if you  
7 will, that a request that started out as an emergency  
8 procedure, now looks to be four or five or six months  
9 long, you're going to be well past the planting season.

10 MR. IACOPINO: We will be.

11 MR. SAMSON: I was not joking when I  
12 said "it's under water up there." I skidooed up there  
13 this winter. And, there's no way you'll get access to  
14 that site now, and probably not for another month. So,  
15 that's going to, you know, delay the proceedings even  
16 further.

17 MR. IACOPINO: Well, it may or it may  
18 not. Because, in terms of a site visit, to get the  
19 Committee up there is actually somewhat of a chore. And,  
20 they generally don't go, if it's bad weather.

21 MR. SAMSON: Well, I know you had a hard  
22 time getting them to Littleton. So, you know, I don't  
23 know how you're going to get them there.

24 MR. IACOPINO: Well, no. And, I don't

1 mean this as -- I mean this as an actual, I don't --  
2 you've been up there on a snowmobile, obviously, you're  
3 capable of doing that. But, to take a group of people,  
4 which is probably going to be anywhere between 10 and 15  
5 state commissioners, to bring them up there, to have the  
6 conveyances, either the four-wheel drive vehicles or  
7 whatever, that need to be up there, to corral everybody to  
8 get them to go to see the parts that are necessary, it is  
9 a logistical endeavor.

10 MR. SAMSON: Oh, it will be a nightmare.

11 MR. IACOPINO: In fact, we did it, we  
12 went up before the Application was decided.

13 MR. ROTH: And all we saw was clouds.

14 MR. IACOPINO: All we saw was clouds,  
15 and we got rained on, and it was not pleasant. Actually,  
16 one side was nice and sunny, and the other side we got  
17 rained on. So, it was a very interesting day. It took a  
18 whole day to do that. Now, obviously, we're only talking  
19 about a certain part --

20 MR. SAMSON: Right.

21 MR. ROTH: Yes.

22 MR. IACOPINO: -- at this point, so, it  
23 should be -- I will let you know is that certain members  
24 of the Committee have been up there in the last year or

1 so, because, under their authority for the Committee, they  
2 actually did a site visit, I think it was in September.  
3 So, some members of the Committee are familiar with the  
4 Project up there, at least what parts of it looks like.  
5 Obviously, they didn't walk every foot of it.

6 MR. ROTH: Yes. I think the issue is  
7 more than just a general idea of what it looks like, but  
8 to actually look at the places where the revegetation  
9 issue has arisen.

10 MR. IACOPINO: Right.

11 MR. ROTH: And, you know, to be fair, I  
12 mean, the last tour we did included, you know, a 100-mile  
13 circle, --

14 MR. IACOPINO: I know.

15 MR. ROTH: -- to get all of the  
16 viewpoints from various places. And, while, you know, it  
17 might be fun to do that again, --

18 MR. IACOPINO: No, it wouldn't.

19 MR. ROTH: -- I don't think that that's  
20 what we want to do. I think we just want to get up there  
21 and see where the turbines are.

22 MR. IACOPINO: Uh-huh. Yes. But the  
23 thing is is that it's not going to be done -- I can tell  
24 you it's not going to be done in the next 30 days.

1 MR. SAMSON: Oh, no, no. And, I don't  
2 anticipate that. But I was glad to hear that the parties  
3 are talking. My only position here, or job, I guess, if  
4 you will, is going to be to report back to the other two  
5 commissioners, --

6 MR. IACOPINO: Uh-huh.

7 MR. SAMSON: -- you know, on the  
8 proceedings today, and how I observed them, and the notes  
9 that I gathered and so forth.

10 MS. LINOWES: If I may reiterate what  
11 you had said we were talking about earlier, though. The  
12 Applicant is still operating under the existing  
13 Certificate. So, does -- this whole process is  
14 independent and parallel to his requirement to meet the  
15 conditions of that Certificate, which means he has to  
16 revegetate back the road, if it's not at this point.

17 MR. SAMSON: Right. Right. I  
18 understand that.

19 MS. LINOWES: And, if there's a failure  
20 sometime between now and August, --

21 MR. IACOPINO: Yes. But, Lisa, as you  
22 know, you can't -- if the conditions are such that the  
23 road cannot be revegetated, because it's under water or  
24 whatever, obviously, the Committee is not, I mean, --

1 MS. LINOWES: No, I understand that.

2 MR. IACOPINO: -- they're subject to the  
3 conditions on the site, you know. I mean, --

4 MR. ROTH: No. But, if you -- right.  
5 And, so, if you file a motion saying "they didn't  
6 revegetate since August of last year", right, then that  
7 wouldn't carry much water. But, if you filed that in July  
8 and said "yes, they missed the planting season", that  
9 would be of something of interest, I believe.

10 MR. IACOPINO: Okay. So, the other  
11 question that I -- the first question that I had that was  
12 those outstanding, is just the issue of the High Elevation  
13 Revegetation Agreement, which you're going to get or try  
14 to find.

15 MR. PACHIOS: Yes.

16 MR. IACOPINO: The other one was  
17 referenced before, and I want to go back to it, because I  
18 get calls about it probably three times a week now, and  
19 that is the ski area issue. And, nobody has to answer  
20 this, but does anybody have any idea as to when that issue  
21 will gel?

22 MR. ROTH: Mike, can I just make a  
23 recommendation that this conversation go off the record,  
24 since this is not part of our prehearing conference?

1 MR. IACOPINO: Sure. I don't have any  
2 problem. I'm just trying to find out some information. I  
3 thought everybody would be interested in it. But that's  
4 fine. We can go off the record.

5 MR. ROTH: Oh, we are interested in it.  
6 But I just don't think it belongs in this record.

7 MR. IACOPINO: Well, if they were to  
8 file in two weeks, okay, to do something with respect to  
9 the ski area, I mean, it would make sense that we would at  
10 least want to know that, so that we could change this  
11 schedule that we've agreed on here today, or build it in  
12 somehow, so that we know. That's the only reason I'm  
13 asking is, if there's going to be any change in the issues  
14 before the Committee --

15 MR. ROTH: Based on what I know, that  
16 seems highly unlikely. But you would know better.

17 MR. PACHIOS: But what does that -- I'm  
18 not --

19 MR. IACOPINO: If we expect to see  
20 another motion to amend in the short term?

21 MR. PACHIOS: Well, this is off the  
22 record?

23 MR. IACOPINO: No, we're on the record  
24 right now. If you would prefer to go off the record, we



1 can?

2 MR. PACHIOS: Yes. Let's go off the  
3 record.

4 MR. IACOPINO: Okay. All right.  
5 Anything else then while we're on the record?

6 (No verbal response)

7 MR. IACOPINO: All right. We'll adjourn  
8 this prehearing conference at 2:54 p.m. Thank you.

9 **(Whereupon the prehearing conference was**  
10 **adjourned at 2:54 p.m.)**

11

12

13

14

15

16

17

18

19

20

21

22

23

24